Document No. 3688
Voted at Meeting of 11/16/78

RESOLUTION OF THE BOSTON REDEVELOMENT AUTHORITY
RE: A CERTAIN TRIPARTITE AGREEMENT CONCERNING A PROPOSED REDEVELOPMENT SOMETIMES KNOWN AS LAFAYETTE PLACE

WHEREAS, the City of Boston (the "City") acting through its Mayor and its Real Property Board and Lafayette Place Associates (the "Developer") propose to enter into a Tripartite Agreement with the Boston Redevelopment Authority (the "Authority") concerning the proposed public and private redevelopment project in Boston called Lafayette Place (the "Project"); and,

WHEREAS, the City and the Authority propose also to enter into a Sale and Construction Agreement with Alstores Realty Corporation, Al-Jordan Realty Corp., and Jordan Marsh Company (Boston) in implementation of the Project; and,

WHEREAS, the Authority on July 27, 1978 and the Boston City Council on October 11, 1978 have previously adopted certain resolutions with respect to the Project; and,

WHEREAS, the Authority has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the Project; and,

WHEREAS, the Urban Renewal Plan for the Bedford-West Urban Renewal Area, Project No. Mass. R-82L, has been duly reviewed and approved in full compliance with federal, state and local law; and,

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with federal financial assistance under said Title 1, including those prohibiting discrimination because of race, color, sex, religion or national origin; and

WHEREAS, Lafayette Place Associates and the City have expressed an interest in and have submitted a satisfactory proposal for the development of the Bedford-West Urban Renewal Area, which is part of the land area to be used in the implementation of the Project; and,

WHEREAS, the proposed Tripartite Agreement provides for the design and construction within the area bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Hayward Place and Washington Street:

(a) of public improvements by the City, including parking spaces for about 1,500 automobiles, approximately 900 of which spaces will be located within a new, subterranean public parking garage, and

(b) of private improvements by the Developer in air-rights above, within and contiguous to said new parking garage, consisting of an integrated retail, commercial, office and hotel complex; and,

WHEREAS, the Authority finds that the Project will reverse the economic decline of the downtown retail area of the City, facilitate efficient land use within the area, improve traffic flow, and expand the real property tax base of the area; and,

WHEREAS, the Authority finds that the public improvements described in the proposed Tripartite Agreement, including said new public parking garage, and the private improvements described therein will serve a public purpose, and that certain aspects of such private improvements require integration with the public improvements in order to bring the public benefits under Chapter 474 of the Acts of 1946 of the General Laws, as amended, to full fruition;

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the Director be and is hereby, authorized and empowered to execute said Tripartite Agreement concerning the Project by and among Lafayette Place Associates, the Boston Redevelopment Authority and the City of Boston, and to execute the Sale and Construction Agreement concerning the Project by and among the Boston Redevelopment Authority, the City of Boston, Alstores Realty Corporation, Al-Jordan Realty Corp. and Jordan Marsh Company (Boston), in the form submitted to the Authority.

2. That the Director be, and is hereby, authorized and empowered to execute a standard Land Disposition Agreement with the City of Boston providing for the sale of the parcel bounded by Washington Street, Bedford Street, Harrison Avenue Extension and Norfolk Place, in the form submitted to the Authority.

3. That the Director be, and hereby is, authorized and empowered to execute such other and further documents as may be reasonably necessary to effect and implement the terms and provisions of said agreements.

4. That the execution and delivery by the Director of any document purporting to be executed and delivered pursuant to the foregoing resolutions shall be conclusively treated as authorized by the foregoing resolutions.

5. That Lafayette Place Associates and the City of Boston acting by and through its Real Property Board are designated redevelopers of the Bedford-West Urban Renewal Project Area, each to the extent of its privileges and obligations with respect thereto as set forth in said Tripartite Agreement.

6. That it is hereby determined that Lafayette Place Associates and the City of Boston, acting by and through its Real Property Board, possess the necessary qualifications to develop the land in accordance with applicable provisions of the Urban Renewal Plan for the Project Area and have produced a feasible development plan.

7. That the Resolution of the Authority dated August 3, 1978, concerning the execution of the Tripartite Agreement be and is hereby ratified and affirmed in its entirety.

SALE AND CONSTRUCTION AGREEMENT

Dated as of October 11, 1978

among

THE CITY OF BOSTON

THE BOSTON REDEVELOPMENT AUTHORITY

ALSTORES REALTY CORPORATION

AL-JORDAN REALTY CORP.

and

JORDAN MARSH COMPANY

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SALE AND CONSTRUCTION AGREEMENT

AGREEMENT dated as of October 11, 1978 among THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts acting by and through its Mayor and Real Property Board (the "City"), THE BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), ALSTORES REALTY CORPORATION, a Delaware corporation authorized to transact business in the Commonwealth of Massachusetts ("Alstores"), AL-JORDAN REALTY CORP., a Massachusetts corporation ("Al-Jordan"), and JORDAN MARSH COMPANY (BOSTON), a Massachusetts corporation ("Jordan Marsh"). The City, the BRA, Alstores, Al-Jordan and Jordan Marsh are each hereinafter sometimes called a "Party" and sometimes hereinafter collectively called "Parties".

THE BACKGROUND OF THIS AGREEMENT

A. Alstores owns certain parcels of land in downtown Boston, Massachusetts, described as the "Annex" and "Bristol" parcels on the site plan attached hereto as Exhibit A. The Annex parcel constitutes all of the land bounded by the nearest sidelines of Avon Street, Chauncy Street, Bedford Street and Washington Street. The Bristol parcel constitutes all of the land bounded by the nearest sidelines of Bedford Street, Chauncy Street, Exeter Place and Harrison Avenue Extension. Al-Jordan owns or is lessee of the parcels of land described in Exhibit A hereto as "Old Main and Shuman" and "Units 1, 2 and 3" and leases or subleases said parcels to Jordan Marsh which operates a department store thereon.

B. In furtherance of its objectives to consolidate the operations of Jordan Marsh in downtown Boston into a more efficient and productive unit, to upgrade the store in keeping with Jordan Marsh's highly held public image, to ensure that Jordan Marsh will continue to serve its customers within a revitalized and rejuvenated downtown environment, and to inspire the rejuvenation, revitalization and redevelopment of downtown Boston in the public interest, Alstores, in conjunction with its affiliates Al-Jordan and Jordan Marsh, has demolished the structures that existed on the Old Main and Shuman parcels and constructed thereon a new retail facility (which, together with the structures on Units 1, 2 and 3, constitutes the "Jordan Marsh Facility").

C. The City, Lafayette Place Associates (a Massachusetts general partnership hereinafter called the "Developer", which includes as partners Mondev Mass., Inc., a Massachusetts corporation, and Sefrius Corp., a Delaware corporation), and the BRA have entered into an Agreement of even date herewith (the "Tripartite Agreement") providing, among other things, for the City to acquire from the BRA the parcel of land bounded generally by Washington Street, Bedford Street, Harrison Avenue Extension and Norfolk Place

and to cause construction of a subterranean parking garage thereon and on the Annex and Bristol parcels (the "Garage"). The Tripartite Agreement also provides for the City to sell to the Developer the air rights above the Garage and appurtenant rights and for the Developer to construct thereon certain commercial facilities including a hotel and a retail center (collectively the "Lafayette Place Complex").

D. Alstores, Al-Jordan, Jordan Marsh and the Developer have entered into an Agreement of even date herewith (the "Development Agreement") providing, among other things, for the execution and delivery of the Maintenance and Easement Agreement referred to in Section 1.4(b) hereof (the "Maintenance and Easement Agreement") and for certain matters relating to the construction of the Lafayette Place Complex.

E. It is the mutual desire of the Parties to provide for the sale and purchase of the Annex and Bristol parcels, certain appurtenant rights and easements and the rights of Alstores or its affiliates in certain ways, to coordinate the construction and development of the Garage with the Jordan Marsh Facility and to make certain other covenants, agreements and provisions all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

Article One

Sale and Purchase

1.1 Sale and Purchase of the Annex and Bristol Parcels. Upon and subject to the terms and conditions contained in this Agreement (including the exhibits hereto), Alstores, Al-Jordan and Jordan Marsh agree to sell and convey, and the City agrees to purchase, the Bristol and Annex parcels together with, subject to Section 2.1, the buildings and other improvements thereon (collectively the "improvements", and including without limitation the bridge spanning Avon Street as part of the improvements) and all rights and easements appurtenant thereto (except that no easement is granted to enter the Jordan Marsh Facility through an existing tunnel under Avon Street or the bridge spanning Avon Street) including easements for public pedestrian passage in the Passageway and for vehicular access by the City in the Truck Ramp as defined in and subject to and governed in all instances by the terms of the Maintenance and Easement Agreement, and all right, title and interest of Alstores, Al-Jordan or Jordan Marsh in those portions of the following streets and ways included within Lafayette Place as shown on Exhibit A: Exeter Place, Harrison Avenue Extension, Bedford Street and the portion of Chauncy Street contiguous to the Bristol Parcel (collectively the "Bristol ways") and Avon Street (except for existing encroachments on the northerly side of Avon Street, which are substantially

as shown on the map of encroachments attached as part of Exhibit D to the form Maintenance and Easement Agreement attached as Exhibit E hereto, to which Alstores or its affiliates shall retain title), Chauncy Street (except for the portion of Chauncy Street contiguous to the Bristol parcel) and Washington Street (collectively the "Annex ways"). The Bristol parcel, ways and appurtenant rights and easements are collectively referred to as the "Bristol Property"; the Annex parcel, improvements and ways and appurtenant rights and easements are collectively referred to as the "Annex Property"; and the Bristol Property and the Annex Property are collectively referred to as the "Properties". The conveyance of the Properties shall be made by (i) quitclaim deeds conveying good and clear record and marketable title to the Bristol parcel and the Annex parcel and, subject to Section 2.1, improvements subject to no encumbrances and rights of others except only those matters set forth as Permitted Exceptions in Exhibit A hereto and (ii) the Maintenance and Easement Agreement granting the rights and easements set forth therein subject to no encumbrances or rights of others except as provided therein or those matters set forth as Permitted Exceptions in Exhibit A hereto.

1.2. Purchase Price; Payment. The purchase price for the Properties to be conveyed pursuant hereto is $8,650,000 (of which $6,150,000 shall be paid absolutely on or before the Closing Date as hereinafter provided and $2,500,000 shall be a contingent payment to be held in escrow as hereinafter provided) to be allocated between the Properties as Alstores and the City shall agree. The City has heretofore caused the payment to Alstores of $1,650,000, and immediately upon obtaining the City Council Approval referred to in Section 1.6(d) and the satisfaction of the condition specified in Section 1.7(d), the City shall pay to Alstores an additional $1,500,000 by a certified or bank check. Such payments shall be held and applied on account of the purchase price or as otherwise provided in Section 1.3 hereof.

At 11:00 a.m. Boston time on the Closing Date (as hereinafter defined), at such place within the City of Boston as the City shall have designated in a written notice received by Alstores prior to such date, the closing of title to the Properties shall take place. At such closing of title the City shall cause the following to occur:

(a) The City shall deliver to Alstores one or more certified or bank checks, payable to the order of Alstores in funds immediately available at the place of closing, in an amount equal to the sum of $1,000,000 plus, in consideration of an enhancement of the value of the Properties resulting from the demolition referred to in Section 2.1, the costs and expenses of such demolition for which Alstores is entitled thereunder to reimbursement;

(b) The City shall deliver to New England Merchants National Bank as escrow agent (the

"Escrow Agent") one or more certified or bank checks drawn on a member of The Boston Clearing House Association payable to the order of the Escrow Agent in the amount of $2,500,000, to be held by the Escrow Agent in an account (the "Escrow Account") and invested, reinvested and distributed as provided in the escrow agreement referred to in Section 1.3 (the "Escrow Agreement"); and

(c) Ten promissory notes of the Developer or its affiliate shall be delivered to Alstores in the form attached hereto as Exhibit C, maturing respectively on the first through tenth anniversaries of the Closing Date, and each in the principal amount of $200,000, bearing interest at a rate not less than 8 1/2% nor more than 10 1/2% per annum but otherwise 1 1/2% in excess of the prime commercial lending rate of Manufacturers Hanover Trust Company as in effect from time to time and accompanied by a "clean" irrevocable letter of credit or other security, reasonably satisfactory in form and substance to Alstores. Each such letter of credit shall (i) be in an amount equal to the principal amount of the note which it accompanies plus interest thereon to fourteen days after maturity at the rate of 10 1/2% per annum, (ii) entitle the holder of such note to draw drafts thereunder payable in the Borough of Manhattan, City of New York, in the event any payment of principal of or interest on such note shall not be paid when due, by presenting such draft together with the related letter of credit and note and a statement signed by the holder that the note was not paid when due and that fourteen days have elapsed since the holder gave the maker of the note written notice of such nonpayment, and (iii) be issued by any one or more of the following: Citibank N.A., The Chase Manhattan Bank N.A., First National Bank of Boston, Manufacturers Hanover Trust Company, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Chemical Bank, Marine Midland Bank, Irving Trust Company, Credit Lyonnais or Banque Francaise du Commerce Exterieur. If other security reasonably satisfactory in form and substance to Alstores shall be delivered in lieu of letters of credit, the term "letters of credit" as hereinafter used shall be deemed to refer to such other security.

On the Closing Date or Construction Commitment Date (as hereinafter defined), whichever is later, the City shall cause the Escrow Agent to deliver to Alstores $2,500,000 plus interest as provided in the Escrow Agreement. The "Construction Commitment Date" shall mean such business day as Alstores shall specify by notice to the City and the Escrow Agent after any of the following events shall have occurred:

(i) the Developer, or any other person owning the Air Rights (as defined in the Tripartite Agreement) or otherwise having the right to develop the same (such other person being herein referred to as the "Successor Developer"), receives a commitment from one or more Institutional Lenders (as defined in the Tripartite Agreement) obligating such Lender or Lenders, subject to such conditions as shall be normal for construction loan commitments for projects comparable to the Lafayette Place Complex, to make loans to or for the benefit of the Developer or the Successor Developer in such amount as shall be sufficient, together with any funds available to the Developer or the Successor Developer, to pay the construction costs of the retail and hotel portions of the Lafayette Place Complex or, if other improvements are to be constructed instead of such retail and hotel facilities, the construction costs of such other improvements as the Developer or the Successor Developer shall have the right to develop; or

(ii) the Developer or the Successor Developer shall grant one or more mortgages the loan proceeds from which shall be used in connection with actual construction of any part of the Lafayette Place Complex; or

(iii) the Developer or the Successor Developer commences construction of the retail or hotel portion of the Lafayette Place Complex or such other improvements as the Developer or Successor Developer shall have the right to develop.

If Substantial Completion (as defined in the Tripartite Agreement) of the Garage shall not occur by the 90th day after the date specified in the Master Schedule (as defined in the Tripartite Agreement) for such Substantial Completion, or if by reason of a default by the City or the BRA in the performance of its obligations hereunder or under the Tripartite Agreement, none of the events specified in subparagraphs (i), (ii) or (iii) of this section shall occur on or before such 90th day, then Alstores shall have the right to specify a business day as the Construction Commitment Date, and the Construction Commitment Date shall for all purposes be the date so specified, notwithstanding the failure of any of such events to occur.

If at any time prior to the Construction Commitment Date an event of default on the part of the Developer shall occur under the Tripartite Agreement and the City or the BRA shall have knowledge of such event of default, it shall promptly notify Alstores of the existence of such event of default and shall not exercise its rights under Section 11.02 or 11.04 or give any notice under Section 11.03 of the Tripartite Agreement without first consulting with Alstores. If the City or the BRA shall have the right through the exercise of remedies provided in the Tripartite Agreement or otherwise to arrange for

a Successor Developer, Alstores as well as the City and the BRA shall have the right to find an appropriate Successor Developer, but no Successor Developer shall be designated or accepted as such who is not mutually approved by the City, the BRA and Alstores. The City and the BRA agree to deliver such notices and to exercise such of their remedies under Article XI of the Tripartite Agreement as Alstores shall request, in order to permit a Successor Developer to be designated and to permit the Successor Developer to construct such improvements as it shall have the right to develop. If the City or the BRA shall fail, for a period of 30 days after receipt of such request from Alstores, to commence exercising such remedies as hereinabove provided or having commenced the exercise of such remedies shall fail to proceed diligently and with continuity to exercise the same, then Alstores shall have the right to exercise the same in the name of and on behalf of the City and the City hereby consents to such exercise.

Prior to but not after the commencement by the Developer of construction of the retail or hotel portion of the Lafayette Place Complex, if the consent or approval of the BRA to any transfer is required under Article IX of the Tripartite Agreement the BRA shall not give such consent or approval without the consent or approval of Alstores. If the BRA shall receive a notice pursuant to Section 9.04 of the Tripartite Agreement and either the BRA or the Developer shall within five days after the BRA's receipt of such notice deliver a copy thereof to Alstores, and Alstores shall not within 20 days after receipt thereof by Alstores object to such transfer and specify reasonable grounds for such objection (no such objection shall be made if no such reasonable grounds exist), Alstores shall be deemed to have consented to or approved such transfer. The consent of the BRA pursuant to the provisions of Chapter 121A (as defined in the Tripartite Agreement) to any transfer of any interest in the Lafayette Place Complex or of any interest in the Developer shall be deemed a consent by the BRA for the purposes of the first sentence of this paragraph. Notwithstanding the foregoing, no consent by Alstores shall be required under this paragraph to a transfer if after giving effect to such transfer the power and right to carry out the obligations of the Developer under the Development Agreement, the Maintenance and Easement Agreement and the Tripartite Agreement shall remain in one or more entities under the direct or indirect control of both Mondev International, Ltd. and Union Internationale Immobiliere S.A.

1.3. Closing Date; Termination. The Closing Date shall be November 30, 1978 unless extended. The City shall have the right by notice to Alstores to extend the Closing Date to any business day not earlier than ten days after the giving of such notice provided Alstores receives the amounts that the Developer or the City is obligated to pay as and when provided in Section 1.3 of the Development Agreement and this Section. If the City shall extend the Closing Date beyond January 31, 1979 and any of the Governmental Approvals referred to in Section 1.6(d) shall not have been obtained on or before such date, the City shall pay to Alstores on

January 31, 1979 $250,000 to be held by Alstores and applied on account of the purchase price or otherwise as hereinafter provided. If $250,000 is paid by the Developer as provided in Section 1.3 of the Development Agreement, the principal amount of the first to mature of the promissory notes of the Developer referred to in Section 1.2(c) shall not be delivered and the principal amount of the second to mature of such notes shall be reduced to $150,000, and if $250,000 is paid by the City pursuant to this Section the cash payments to be made by it to Alstores on the Closing Date pursuant to Section 1.2(a) shall be reduced by $250,000. In no event, however, shall the Closing Date be later than June 1, 1979, such time being of the essence. The City and the BRA shall use their best efforts to cause the conditions set forth in Section 1.6(d) (the "Section 1.6(d) conditions") to be satisfied as promptly as possible. The Developer has separately agreed with the City and the BRA and with Alstores to use its best efforts to cause City Council Approval and the 121A Approval referred to in Section 1.6(d) to be satisfied as promptly as possible. Alstores shall use its best efforts to cause the conditions set forth in Section 1.7(d) (the "Section 1.7(d) condition") to be satisfied as soon as possible. If, notwithstanding the foregoing, the Section 1.6(d) and 1.7(d) conditions shall not be satisfied on or before the Closing Date, the Party the condition to whose obligations hereunder shall not have been satisfied may terminate this Agreement by written notice to the others in which event no Party shall have any obligation to the others hereunder or by reason hereof except that (a) if the Section 1.7(d) condition shall have been satisfied, Alstores shall pay to the Developer without interest $650,000 of the $1,650,000 heretofore paid to Alstores by the Developer on behalf of the City on account of the purchase price and shall be entitled to retain the balance of all amounts paid on account of the purchase price and (b) if the Section 1.7(d) condition shall not have been satisfied, Alstores shall pay to the Developer the amounts specified in clauses (i) and (iv) of the second paragraph of this Section 1.3. In the event that the City defaults in the performance of any of its obligations, as and when provided under this Article One, to make payments, to deliver the promissory notes of the Developer together with the letters of credit, to execute and deliver the Escrow Agreement, to execute and deliver the Maintenance and Easement Agreement and to cause the conditions referred to in Section 1.7 (other than Section 1.7(d)) to be satisfied, Alstores shall have the right as its sole remedy to terminate this Agreement by written notice to the City and to retain title to the Properties as well as to retain all amounts theretofore paid to it on account of the purchase price. Notwithstanding the foregoing, any election by Alstores to close title and deliver the deeds as herein provided shall not relieve the City from any obligation of it hereunder to make any payment not made on or before the Closing Date.

If for reasons beyond their control Alstores, Al-Jordan and Jordan Marsh shall be unable (other than by reason of a mortgage lien, mechanic's or tax lien or other monetary charges or claims therefor) to convey title

(including the rights under the Maintenance and Easement Agreement) in accordance with this Article One or otherwise to satisfy the conditions specified in Sections 1.6(a), (b), (c), (e), (f), (g) and (h) hereof and if the City shall be in compliance with all its obligations referred to in the immediately preceding paragraph, the City may terminate this Agreement by written notice to Alstores (but only after Alstores has been given 30 days' written notice of all material defects in title and has failed to remedy such defects as shall not have been waived) in which event neither Party shall have any further obligations to the other hereunder or by reason hereof, except that Alstores shall pay (i) to the Developer the $1,650,000 theretofore paid to Alstores by the Developer on behalf of the City on account of the purchase price, (ii) to the City the $1,500,000 paid to Alstores by the City upon obtaining the City Council Approval and the satisfaction of the Section 1.7(d) condition plus interest thereon at the rate specified in Section 2.6, (iii) if the Closing Date shall have been extended beyond November 30, 1978, to the City or the Developer, whichever shall have paid the same, the amounts paid to Alstores pursuant to the third sentence of this Section 1.3 or Section 1.3 of the Development Agreement, and (iv) to the Developer the cost of examining title and the cost of obtaining a survey of said parcel or parcels, not to exceed $15,000 in the aggregate. If on the Closing Date the conditions specified in Section 1.7 shall be satisfied but there shall be material defects in the title to be conveyed hereunder, the City shall have the right, in lieu of terminating this Agreement, to take title by eminent domain and the consideration for such taking shall be the purchase price hereunder. Immediately after the execution and delivery of this Agreement, the City shall cause title to the Properties to be examined and a survey of the Properties to be prepared and to furnish promptly to Alstores written notice of any material defects in title held by Alstores, Al-Jordan and Jordan Marsh to the Properties. If such notice is not given within 60 days of the date of this Agreement (such time being of the essence), the City shall be deemed to waive all defects in title then existing.

Simultaneously with the delivery of the check or checks, promissory notes and letters of credit that are to be delivered on the Closing Date pursuant to Section 1.2 and Section 2.1, (i) Alstores shall deliver the deeds required by this Agreement to be delivered at the closing of title to the Properties, (ii) the Maintenance and Easement Agreement shall be executed and delivered by the parties hereto as provided in Section 1.4(b), and (iii) the City, Alstores and the Escrow Agent shall execute and deliver an Escrow Agreement in substantially the form attached as Exhibit B hereto.

Acceptance by the City of the deeds provided for in this Article One shall be in full discharge of all obligations on Alstores' part to be performed or observed under Article One of this Agreement except as expressly provided herein to the contrary.

1.4. Instruments of Transfer. At the closing of title to the Properties, the following instruments of transfer shall be delivered:

(a) Deeds. Alstores shall deliver to the City two deeds in substantially the form attached hereto as Exhibit D, subject to such changes as the City in light of the results of the title examination and survey shall request within 60 days of the date hereof and Alstores shall approve, duly executed and acknowledged by the grantor. To enable Alstores to make conveyance as herein provided, Alstores may, at the time of delivery of the deeds, use the purchase money (other than the payment to the Escrow Agent) or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deeds.

(b) Maintenance and Easement Agreement. The City, Alstores, Al-Jordan and Jordan Marsh shall execute and deliver a Maintenance and Easement Agreement with the Developer substantially in the form of Exhibit E hereto with such changes thereto as may be reasonably requested by any of the parties thereto, in a written notice delivered at least 20 days prior to the Closing Date, in order to facilitate obtaining financing or the consent and agreement referred to in Section 1.7(d) or to comply with governmental or construction requirements or to permit the same to be recorded (including the preparation of a survey), provided that such changes do not impose unreasonable burdens on or otherwise unreasonably adversely affect any other party thereto or its affiliates.

1.5. Possession. On the Closing Date, possession of the Bristol parcel and the Annex parcel and improvements shall be delivered by Alstores to the City, subject to Section 2.1, free and clear of all tenants and occupants.

1.6. Conditions to the City's Obligations. The obligation of the City to effect payment of the purchase price payable on the Closing Date as provided in Section 1.2 is subject to the fulfillment, at the time of the closing of title hereunder, of the following conditions:

(a) Instruments of Transfer. Alstores shall have delivered the deeds duly executed by the grantors thereunder and a counterpart of the Maintenance and Easement Agreement duly executed by Al-Jordan and Jordan Marsh.

(b) Marketability of Title. Title to the Properties (including without limitation the rights and easements granted to the City and the Developer pursuant to the Maintenance and Easement Agreement) shall comply with Section 1.1.

(c) Consents and Releases for Avon Street and Bridge and Mortgage Subordination, Etc. The City shall have received in recordable form (i) from the owner and lessee of the premises abutting the northerly side of Avon Street at the point where the bridge crosses Avon Street, and from the holder of each mortgage on such premises, a consent to the demolition of the bridge and a release of all their right, title and interest in and to the bridge and such portion of Avon Street and (ii) from the holder of such mortgage an instrument subordinating such mortgage to the rights of the City and the Developer under the Maintenance and Easement Agreement.

(d) Governmental Approvals. (i) The Boston City Council shall have given, to the extent required by law, its approval of the City's entering into its obligations hereunder and under the Tripartite Agreement (the "City Council Approval"). (ii) The BRA shall have approved the Developer's application for authorization to proceed with the Lafayette Place Complex pursuant to Chapter 121A of the General Laws of Massachusetts and such approval shall not have been appealed (the "121A Approval"). (iii) All environmental approvals required by law for the construction of the Garage and the Lafayette Place Complex ("Environmental Approvals" and, collectively with the City Council Approval and the 121A Approval, the "Governmental Approvals") shall have been obtained and any appeal period with respect thereto shall have expired.

(e) Corporate Authorizations. The City shall have received resolutions, certified by the Secretary or an Assistant Secretary of such corporation, of the Board of Directors of Alstores, Al-Jordan and Jordan Marsh, duly adopted at a meeting or meetings thereof, authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby.

(f) Opinion of Counsel. The City shall have received the favorable written opinion dated the Closing Date of Sullivan & Cromwell or Hemenway & Barnes or both, as counsel to Alstores, Al-Jordan or Jordan Marsh in connection with this transaction, or other counsel acceptable to the City, as to (i) the corporate power and authority of Alstores, Al-Jordan and Jordan Marsh to execute, deliver and perform this Agreement, (ii) the due authorization, execution and delivery by Alstores, Al-Jordan and Jordan Marsh of this Agreement, and (iii) the validity and legally binding effect of this Agreement upon Alstores, Al-Jordan and Jordan Marsh.

(g) Representations and Warranties. The

representations and warranties in Section 3.1 hereof shall be true as of the Closing Date.

(h) Operating Covenant. The City shall have received an instrument in recordable form, substantially in the form attached hereto as Exhibit F, duly executed by Al-Jordan and Jordan Marsh providing for an operating covenant with respect to the Jordan Marsh Facility.

1.7. Conditions to Alstores' Obligations. The obligation of Alstores to deliver the deeds with respect to the Properties is subject to the fulfillment of the following conditions:

(a) Payments. The payments in respect of the purchase price to be made on or prior to the Closing Date, including the payment to the Escrow Agent, the payment to Alstores in reimbursement of demolition costs and the delivery of promissory notes and letters of credit, shall be made as provided in Section 1.2.

(b) Authorization. Alstores shall have received evidence reasonably satisfactory to it as to authority of each person signing, on behalf of the City, the BRA or the Developer, this Agreement, the Escrow Agreement, the Maintenance and Easement Agreement and the promissory notes and the letters of credit referred to in Section 1.2, to execute and deliver the documents and instruments executed and delivered by such person and to bind the entity which such person by so signing purports to bind.

(c) Opinions of Counsel. Alstores shall have received the favorable written opinion dated the Closing Date, satisfactory in form and substance to Alstores, of Corporation Counsel of the City in the case of matters relating to the City and the BRA and of Palmer & Dodge in the case of matters relating to the promissory note or notes of the Developer, or in each case other counsel acceptable to Alstores, as to (i) the power and authority of each person signing to execute, deliver and perform this Agreement and the promissory notes referred to in Section 1.2, (ii) the due authorization, execution and delivery of this Agreement, the Escrow Agreement and the Maintenance and Easement Agreement by such of the City, the BRA and the Developer as are parties thereto, and the promissory notes to be delivered pursuant to Section 1.2 by the makers thereof, and (iii) the validity and legally binding effect, as to such of the City, the BRA and the Developer as shall be parties thereto, of this Agreement, the Escrow Agreement, the Maintenance and Easement Agreement and such promissory notes.

(d) Mortgagee's Consent, Etc. The holder of the mortgage on the Jordan Marsh Facility shall have consented to the transactions contemplated hereby and agreed to deliver on or before the Closing Date the consent, release and other instrument referred to in Section 1.6(c).

(e) Representations and Warranties. The representations and warranties in Section 3.2 hereof shall be true as of the Closing Date.

The City and the BRA covenant that, subject to the satisfaction of the conditions specified in Section 1.6, they shall cause the conditions specified in this Section 1.7 (other than Section 1.7(d)) to be satisfied on or before the Closing Date.

1.8. Transfer Taxes. Alstores agrees to pay or cause to be paid all real property transfer taxes, if any, which may be due and payable upon or in connection with the transfer of all or any part of the Properties as hereby contemplated.

1.9. Fire and Other Casualties. The obligation of the City to effect payment of the purchase price shall not be affected by fire or other casualty to any buildings or other improvements on the Properties. Nevertheless, if the improvements on the Annex parcel shall be damaged or destroyed by fire or other casualty, Alstores shall apply the net proceeds of any insurance allocable to such improvements and received by it in respect of such fire or other casualty to reimburse Alstores or the City, as the case may be, for the cost of demolition to grade and fencing of the Annex parcel, and the balance, if any, remaining after such reimbursement shall be retained by Alstores.

1.10. Real Estate Taxes, Etc. Real estate taxes and any water and sewer charges with respect to Properties shall be apportioned as between Alstores and the City as of the midnight immediately preceding the date that the conditions in Section 1.6(d)(i) and Section 1.7(d) are satisfied (the "Apportionment Date"). Alstores shall pay to the City an amount equal to any real estate taxes and any water and sewer charges theretofore unpaid and allocable to periods prior to the Apportionment Date but Alstores shall have no liability for any real estate taxes and any water and sewer charges allocable to periods subsequent thereto. The City shall pay to Alstores an amount equal to any real estate taxes and any water and sewer charges theretofore paid and allocable to periods subsequent to the Apportionment Date. If the amount of said taxes is not known at the time of the delivery of the deeds, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal period, with a reapportionment as soon as the new tax rate and valuation can be ascertained. Alstores shall be entitled to the payment of all net tax refunds, if any, which relate to taxable periods or portions thereof prior to the Apportionment Date.

1.11. Brokerage Fees and Other Expenses. The City represents and warrants that it has not negotiated with any broker, consultant, finder or like agent with respect to the subject matter of this sale who might be entitled to any commission or compensation on account of this transaction, and the City hereby agrees to indemnify and hold harmless Alstores from and against any such commission or compensation. Alstores represents and warrants that it has not negotiated nor has any of its affiliates negotiated with any broker, consultant, finder or like agents with respect to the subject matter of this sale who might be entitled to any commission or compensation on account of this transaction, and Alstores hereby agrees to indemnify and hold harmless the City from and against any such commission or compensation. Each party hereto agrees to bear and pay for its own account the fees and disbursements of its own counsel, accountants, appraisers, engineers and other advisers in connection with the negotiation and preparation of this Agreement and the closing of title hereby contemplated. The provisions of this Section 1.11 shall survive the closing of title hereby contemplated or the termination of this Agreement.

1.12. Certain Acknowledgements by the City. The City acknowledges that neither Alstores, Al-Jordan nor Jordan Marsh has made any representation or warranty, and the City is not relying on any representation or warranty made by any person acting on their behalf, pertaining to all or any part of the Properties, the physical condition or uses thereof, or their compliance with any building codes or other governmental requirements. The City has examined the Properties and, except as expressly provided in or pursuant to this Agreement, will purchase the same "as-is", or as they may be by reason of the demolition contemplated in Section 2.1, and subject to any violations of building codes or other governmental requirements as may exist on the dates of the closing hereinabove provided. Jordan Marsh shall have the right to remove or abandon, as it shall elect, any trade operating fixtures, partitions, furniture and furnishings, office equipment and business machines, machinery, apparatus, installations, equipment and other property used in connection with the conduct of a department store business from said parcels prior to the transfer of possession to the grantee pursuant hereto.

Article Two:

Construction

2.1. Construction of Garage. Alstores shall use its best efforts, and Al-Jordan and Jordan Marsh agree to cooperate with such efforts, to commence demolition of the improvements (including the bridge across Avon Street) on the Annex Parcel as soon as reasonably possible after the Apportionment Date and to prosecute diligently said demolition to completion by the date specified in the Master Schedule. Such demolition shall include closing the opening in the wall of the Jordan Marsh Facility at the point where

said bridge abuts the Jordan Marsh Facility, such closing to be accomplished with materials as nearly as possible the same as the existing wall. In connection with such demolition, Alstores shall take such measures as the City shall reasonably request to comply in substance with the competitive bidding provision of Section 44a - 44e of Chapter 149 of the General Laws of Massachusetts, as amended, whether or not such compliance is legally required. The City shall reimburse Alstores (to the extent not reimbursed through insurance proceeds as provided in Section 1.9) for all costs and expenses reasonably incurred by Alstores in connection with such demolition and closing of the wall opening. All such costs and expenses incurred prior to the Closing Date shall be reimbursed on the Closing Date and all such costs and expenses, if any, incurred after the Closing Date shall be reimbursed promptly after demand therefor. The City agrees that promptly after it acquires title to the Properties and the completion of such demolition, it shall use its best efforts to commence construction of the Garage and diligently prosecute said construction to completion in accordance with the Tripartite Agreement and the Master Schedule and shall otherwise comply with the Tripartite Agreement. The City hereby grants to Alstores a license to enter the Annex Parcel after the Closing Date for the purposes of completing the demolition hereinabove referred to.

The BRA shall not approve, pursuant to Section 4.03 of the Tripartite Agreement, plans for the exterior design of the Lafayette Place Complex or permit such plans to be treated thereunder as approved, without the approval by Jordan Marsh of such exterior design to insure that it does not detract in appearance from the Jordan Marsh Facility provided such approval by Jordan Marsh is not unreasonably withheld; such approval by Jordan Marsh shall be deemed to be given if Jordan Marsh shall not raise specific objection thereto in writing within 15 days after Jordan Marsh shall receive copies of such plans.

2.2. Architectural Coordination. Alstores shall have the right to be informed of, and to consult with the City and its architects with respect to, the design and development of the Garage in a cooperative effort to coordinate the overall planning, construction, harmonization, integration and design of the Garage with the Jordan Marsh Facility and to achieve the objectives set forth in Section 2.3(c). All recommendations, requests or suggestions made by Alstores to the City shall be timely made.

2.3. Standards and Manner of Construction. The construction (which word, as used in this Article, includes, without limitation, initial construction, excavation necessary for such initial construction and, except where otherwise specified, alterations, restoration, repair, rebuilding, modernization and new construction) which shall or may be performed by the City as provided in this Agreement, shall be subject to and in accordance with the following requirements and standards:

(a) Upon commencement of any construction, the City shall diligently prosecute said construction to completion;

(b) All construction shall be in a good and workmanlike manner using first-class materials and in accordance with all applicable governmental laws, ordinances, rules and regulations;

(c) The City shall perform its construction so as not to unreasonably interfere with or impair the access to, use, occupancy or enjoyment of the Jordan Marsh Facility by Al-Jordan or Jordan Marsh or their employees, customers, visitors and licensees ("Permittees") and during such construction shall provide fire egress from the locations where the Jordan Marsh Facility opens onto Avon Street to Chauncy Street as required by law;

(d) If during construction the City's property and the construction thereon could reasonably be deemed to constitute a hazardous condition for Al-Jordan, Jordan Marsh or their Permittees or detract from the attractiveness, which would otherwise exist, of the Jordan Marsh Facility or in the event that either Party's later construction could reasonably be deemed to constitute a hazardous condition or to detract from the attractiveness of the improvements of the other, the Party performing the construction (or on whose property the construction is performed) will erect and maintain during the term of such construction, an adequate and attractive appearing construction barricade, or other protective device, of adequate height, and otherwise so as to provide adequate protection to, and screening from, the public, and shall maintain the same until removal would be justified under good construction practice;

(e) The City will at all times:

(i) take any and all safety measures reasonably required to protect Al-Jordan, Jordan Marsh and all Permittees from injury or damage caused by or resulting from the performance of its construction,

(ii) indemnify, hold harmless and defend Al-Jordan and Jordan Marsh from and against all claims, demands, suits, costs, expenses, and liabilities arising from or in respect to the death, accidental injury, loss or damage caused to any natural person or to the property of any person or entity as shall occur by virtue of its construction, and

(iii) indemnify and hold Al-Jordan and Jordan Marsh harmless from and against mechanic's, materialmen's and/or laborers' liens, and all costs, expenses and liabilities arising from its construction.

2.4. Insurance During Construction. During the construction of the Garage, the City shall maintain or cause its contractors to maintain, at its own expense or the expense of such contractor owner's liability insurance in such amounts as shall customarily be maintained by owners, contractors, builders or developers during similar construction. All policies of insurance maintained by the City under this Section 2.4 shall name Al-Jordan and Jordan Marsh as co-insureds.

2.5. Utility Lines. The Jordan Marsh Facility is served by lines for water, sanitary and storm sewerage, gas, steam, electricity and telephone ("utility lines"). The City shall not disturb any such utility lines until it has caused them to be relocated, or other utility lines substituted, on a permanent basis. All utility services to the Jordan Marsh Facility shall be kept in continuous operation. If any such relocation or substitution requires work within the Jordan Marsh Facility to connect lines therein to the substituted or relocated utility lines, Alstores, Al-Jordan or Jordan Marsh shall perform such work subject to reimbursement of cost reasonably incurred by it as described below, provided that the plan for any work for which such reimbursement is sought shall have been submitted to the City for its review and approval (not to be unreasonably withheld) prior to the commencement of such work. The City shall notify Alstores and Jordan Marsh from time to time and as far in advance as possible of the extent to which the City needs to disturb such utility lines. The City shall pay, or cause to be paid by someone other than Alstores, Al-Jordan or Jordan Marsh, all costs incurred in connection with the relocation or substitution of utility lines.

2.6. Interest. Any sums payable by any Party to any other pursuant to the terms and provisions of Article Two of this Agreement that shall not be paid when due shall bear interest at the rate of two percent in excess of the average prime lending rate of the member banks of the Boston Clearing House Association per annum, as in effect from time to time, from the date payment thereof became due.

Article Three:

Miscellaneous

3.1. Representations and Warranties of Alstores. Alstores, Al-Jordan and Jordan Marsh each represents and warrants to the City as follows: Such corporation is duly organized, validly existing and in good standing as a corporation under the laws of the jurisdiction of its incorporation and has all necessary corporate power to execute and deliver this Agreement and perform all its obligations hereunder. This Agreement has been duly authorized by all requisite corporate action on the part of such corporation and is a valid and legally binding obligation of such corporation in accordance with its terms. Neither the execution and delivery of this Agreement by such corporation nor the performance of its obligations hereunder will result in the

violation of any provision of such corporation's articles of incorporation or by-laws, as amended to date, or of any law or governmental regulation, or will conflict with any order or decree of any court or governmental instrumentality, relating to such corporation.

3.2. Representations and Warranties of the City and the BRA. The City and the BRA each severally represents and warrants to Alstores, Al-Jordan and Jordan Marsh as follows, subject to the satisfaction of the Section 1.6(d) condition: Such Party has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder. This Agreement has been duly authorized and is a valid and legally binding obligation of such Party in accordance with its terms. Neither the execution and delivery of this Agreement by such Party nor the performance of its obligations hereunder will result in the violation of any law, ordinance or regulation, or will conflict with any order or decree of any court or governmental instrumentality relating to it.

3.3. Joint and Several Rights of Alstores, Jordan Marsh and Al-Jordan. Any right or benefit granted hereunder to Alstores shall be deemed to be granted to and shall be enforceable by Alstores and/or Jordan Marsh and/or Al-Jordan and/or any other affiliate of Alstores jointly and severally and performance of any duty or obligation hereunder (if fully performed hereunder) required of Alstores as performed either by Alstores and/or Jordan Marsh and/or Al-Jordan and/or any other affiliate of Alstores shall constitute full performance hereunder.

3.4. Notices. Every notice, demand, request, consent, approval or other communication which any Party is required or desires to give or make or communicate upon or to another Party (the "Party to be notified") shall be in writing and shall be given or made or communicated by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, addressed to the Party to be notified at the following addresses:

(a) If to Alstores, Al-Jordan or Jordan Marsh:

Jordan Marsh Company
450 Washington Street
Boston, Massachusetts 02107

Attention: President

and

Alstores Realty Corporation
1114 Avenue of the Americas
New York, New York 10036

Attention: President

with a copy to:

Sullivan & Cromwell
250 Park Avenue
New York, New York 10017

Attention: Irvine D. Flinn

(b) If to the City or the BRA:

Commissioner of Real Property
of the City of Boston
City Hall
Boston, Massachusetts 02201

Corporation Counsel of the
City of Boston
City Hall
Boston, Massachusetts 02201

Director
Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201

With a copy to the Developer:

c/o Mondev Mass., Inc.
One Westmount Square
Suite 600
Montreal, Quebec H3Z 2R5

Attention: President

and

c/o Sefrius Corp.
600 Madison Avenue
New York, New York 10022

Attention: President

and

c/o Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

Attention: James B. White

or to such other address or addresses as the Party to be notified shall from time to time and at any time designate by notice to the other Parties.

Every notice, demand, request or other communication sent shall be deemed to have been given, made or communicated, as the case may be, at the time that the same shall have been received.

3.5. No Waiver. No waiver of any default by any Party hereto shall be implied from any omission by any other Party hereto to take any action in respect of such default,

whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant or any other term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Party hereto or of any act or request by any other Party hereto requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Except as otherwise herein specifically provided, the rights and remedies of each Party hereto under the terms of this Agreement shall be deemed to be cumulative and none of such rights and remedies shall be exclusive of any others, or of any right or remedy at law or in equity which any Party hereto might otherwise have from a default under this Agreement and the exercise of any right or remedy by a Party hereto shall not impair any such Party's standing to exercise any other right or remedy.

3.6. No Relationship of Principal and Agent. Neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by any Party hereto or by any third person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any association between the Parties hereto.

3.7. No Personal Liability. No officer, director or stockholder, as such, of Alstores, Al-Jordan or Jordan Marsh or any official or employee, as such, of the City or the BRA shall have any personal liability to the other or to anyone claiming through or under the other.

3.8. Governing Law; Amendment. This Agreement shall be construed as a Massachusetts agreement, is to take effect as a sealed instrument, is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns and may be cancelled, modified or amended only by a written instrument executed by the Parties hereto.

3.9. Exhibits. Any reference to any Exhibit contained within this Agreement shall be deemed to mean any Exhibit to this Agreement as from time to time amended by the Parties hereto.

3.10. Superseding Effect. This Agreement is being entered into pursuant to and, together with the Tripartite Agreement and the Development Agreement, supersedes the letter agreement dated October 31, 1977 among the City, Alstores, Sefrius Corp. and Mondev U.S.A., Inc.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, and their respective corporate

hereunto affixed and attested, as of the day and above written.

ALSTORES REALTY CORPORATION

By _____
President

AL-JORDAN REALTY CORP.

By _____

JORDAN MARSH COMPANY (BOSTON)

By _____

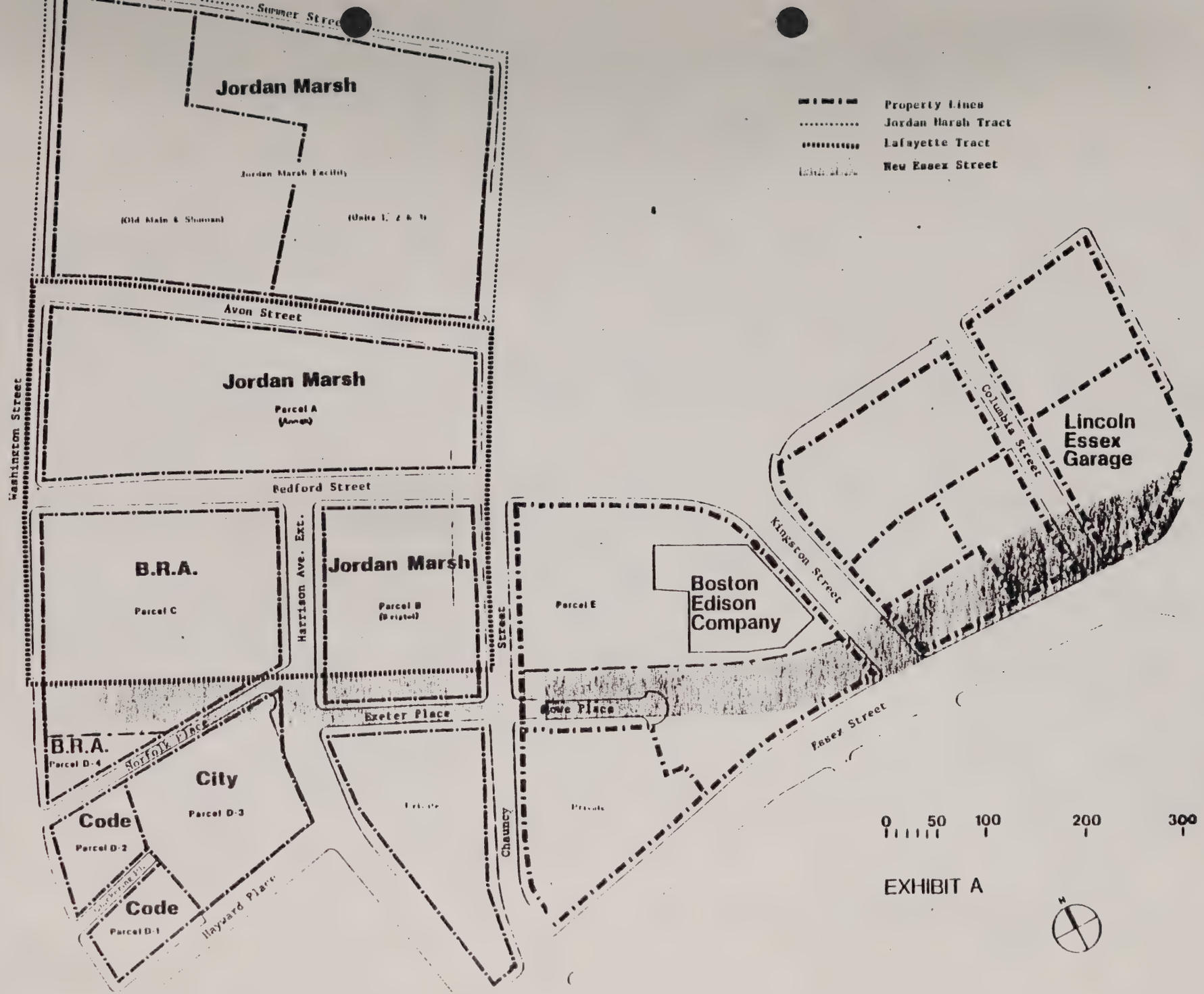
THE CITY OF BOSTON

By _____
Mayor

By _____
Commissioner of Real Property

BOSTON REDEVELOPMENT AUTHORITY

By _____
Director


Property Lines
Jordan Marsh Tract
Lafayette Tract
New Essex Street
Sumner Street
Jordan Marsh
Jordan Marsh Facility
(Old Main & Shannon)
(Units 1, 2 & 3)
Avon Street
Jordan Marsh
Parcel A
(Annex)
Washington Street
Bedford Street
B.R.A.
Parcel C
Harrison Ave. Ext.
Jordan Marsh
Parcel B
(Bristol)
Exeter Place
Parcel E
Boston Edison Company
Kingston Street
Columbia Street
Lincoln Essex Garage
Dove Place
Essex Street
Chauncy Street
Norfolk Place
B.R.A.
Parcel D-4
City
Parcel D-3
Code
Parcel D-2
Code
Parcel D-1
Hayward Place
Private
Private
0 50 100 200 300
EXHIBIT A

A-1

EXHIBIT A

PERMITTED EXCEPTIONS

1. All ordinances or governmental regulations, including building or zoning ordinances, affecting said premises.

2. Real estate taxes, the payment of which is not delinquent at the Closing Date.

3. Existing violations, if any, and encroachments of buildings, stoops, footings, areas, cellars, steps, trim and cornices, if any, upon any street or highway.

4. Any facts an accurate survey of the premises would disclose, provided that the same do not render title unmarketable for the purposes for which the Properties are being purchased.

5. The provisions of Chapter 340 of the Acts and Resolves of the General Court of Massachusetts in 1939 and Chapter 109 of the Acts and Resolves of said General Court in 1956, relating to a bridge crossing Avon Street.

6. Agreement between the City of Boston acting through its Board of Street Commissioners and the Trustees of the Avon Street Trust and others dated August 16, 1939, recorded with Deeds, Book 5819, Page 510, relating to said bridge.

7. Instrument dated January 9, 1957, recorded with said Deeds, Book 7215, Page 556, executed by the City of Boston acting through its Public Improvement Commission, the Trustees of said Avon Street Trust and others relating to an extension and enlargement of said bridge.

8. Any right, title or interest of the City of Boston in the bridge spanning Avon Street.

9. The rights, easements and agreements set forth in a Taking by the City of Boston for subway purposes dated June 10, 1913, and recorded with said Deeds, Book 3736, Page 351, 353 and 374.

10. The rights, easements and agreements, connected with the construction and maintenance of a subway by the City of Boston as set forth in its deed to Frances Little dated January 2, 1920 and recorded with said Deeds, Book 4191, Page 364.

11. License easement with Massachusetts Bay Transportation Authority with reference to right and easement to construct, alter, use and maintain stairways, escalators and passageways, etc., dated April 12, 1976, and shown as Document No. 330855, with Certificate of Title No. 87798, Registration Book 434, Page 198.

12. Mortgage from Al-Jordan Realty Corp. to The Equitable Life Assurance Society of the United States dated December 28, 1976 filed for record December 28, 1976, Book 8923, Page 571 and in Land Court as Document No. 331414 with Certificate No. 87798 in Book 434, Page 198, subordinated to the extent required by the Agreement to which this Exhibit is annexed.

EXHIBIT B

ESCROW AGREEMENT

This AGREEMENT dated , 197 , among THE CITY OF BOSTON, a municipal corporation, of the Commonwealth of Massachusetts (the "City"), ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the Commonwealth of Massachusetts ("Alstores"), and NEW ENGLAND MERCHANTS NATIONAL BANK, a national banking association (the "Bank").

WHEREAS, the City and Alstores are parties, among others, to a Sale and Construction Agreement dated as of August , 1978, providing inter alia that Alstores shall sell and convey and that the City shall purchase and accept the Bristol and Annex parcels as defined therein; and

WHEREAS, pursuant to the Sale and Construction Agreement, the City and Alstores have requested the Bank to act as Escrow Agent and the Bank is willing to so act, upon the terms and subject to the conditions set forth in this Escrow Agreement; and

WHEREAS, the City has deposited with the Bank the sum of $2,500,000 to be held by the Bank in escrow as required by the Sale and Construction Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Bank is hereby appointed Escrow Agent, to hold and dispose of the Escrow Fund (as hereinafter defined) in accordance with the terms hereof.

2. The Bank hereby acknowledges receipt of $2,500,000 and agrees to hold said amount, together with any income, profits and proceeds thereof, as part of a fund (the "Escrow Fund") to be invested, reinvested, distributed and paid over as hereinafter provided.

3. The Escrow Agent shall invest the Escrow Fund in such Permissible Investments, as the City shall instruct the Bank, and in the absence of such instruction, the Escrow Agent shall deposit any funds in the Escrow Fund with the Bank. "Permissible Investments" means (i) certificates of deposit issued by an Authorized Depositary maturing not later than 90 days after acquisition thereof by the Escrow Agent, (ii) securities issued or guaranteed by the United States maturing not later than 90 days after the acquisition thereof by the Escrow Agent, (iii) securities issued or guaranteed by the United States having the benefit of a repurchase agreement with an Authorized Depositary pursuant to which repurchase agreements with such Authorized Depositary is obligated to repurchase the same within not longer than 90 days. "Authorized Depositary" means any commercial bank (including the Bank) with an office in the City of Boston having a capital and surplus in excess of $50,000,000 which is a member of the Clearing House Association of Boston.

4. If the Escrow Agent shall receive from Alstores a notice in substantially the form attached as Annex I hereto, the Escrow Agent shall proceed immediately in the manner it deems most prudent to sell all securities then held in the Escrow Fund and distribute the Escrow Fund as follows: First, it shall pay to itself any fees and expenses then due and owing pursuant to paragraph 9, and Second, it shall pay to Alstores on the date specified in such notice, which shall be not sooner than ten days after its receipt of such notice, an amount equal to $2,500,000 plus interest thereon from the date hereof to the date of payment at the rate specified below, unless prior to the time of such payment it shall have received a notice from the City in substantially the form attached as Annex II hereto, in which event it shall hold the Escrow Fund pending further joint instructions from the City and Alstores or an order of a court having jurisdiction. The rate of interest referred to in the immediately preceding sentence shall be the rate offered by the Bank on 90-day certificates of deposit as in effect on the date hereof and at the end of each 90-day period thereafter.

5. If the amount on deposit in the Escrow Fund shall be insufficient to pay in full the amount to which Alstores is entitled under paragraph 4, the City shall pay to Alstores, promptly after the distribution from the Escrow Fund to Alstores, the excess of such deficiency over the aggregate payments from the Escrow Fund to the Escrow Agent pursuant hereto. If after the distribution to Alstores of the amount to which it is entitled under paragraph 4 and to the Escrow Agent of any fees and expenses to which it is entitled hereunder any balance shall remain in the Escrow Fund, such balance shall be paid to the City. Any amounts remaining in the Escrow Fund 20 years from the date hereof shall be paid to the City.

6. In lieu of making the distributions pursuant to paragraphs 4 and 5 by selling securities, the Escrow Agent may deliver to the order of the Party entitled thereto such securities with such principal and accrued interest as shall equal or exceed the amounts to which such Party is entitled and, if the principal and accrued interest shall exceed such amounts, the Escrow Agent shall be reimbursed by such Party for the excess.

7. Promptly after receiving a notice in the form of Annex I hereto, the Escrow Agent shall deliver a copy thereof to the City; and promptly after receiving a notice in the form of Annex II hereto, the Escrow Agent shall deliver a copy thereof to Alstores. Any remittance, instruction, notice or other communication given hereunder shall be in writing and delivered by registered mail or delivered by hand to the party entitled to receive the same as follows:

(a) If to Alstores:

Alstores Realty Corporation
1114 Avenue of the Americas
New York, New York 10036

Attention: President

with a copy:

c/o Jordan Marsh Company
450 Washington Street
Boston, Massachusetts 02107

Attention: President

(b) If to the City:

(c) If to the Bank:

or to such other address or addresses as the party to receive such remittance, instruction, notice or other communication shall from time to time designate by notice to the other parties. Any instruction, notice or other communication shall be effective only upon receipt.

8. The Bank hereby accepts appointment as Escrow Agent hereunder. The Escrow Agent shall be obligated to perform only such duties as are specifically set forth in the Escrow Agreement and shall not be liable for any action taken, omitted or suffered by it in good faith and believed by it to be authorized or within the discretion or right or powers conferred upon it hereby and may conclusively rely and shall be protected in acting or refraining from acting in reliance upon an order, an opinion of counsel or upon any certificate, request or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be bound by any modifications of this Escrow Agreement unless such modification is in writing and signed by the parties hereto and, if its duties as Escrow Agent hereunder are affected, unless it shall have given prior written consent thereto. If a controversy arises between one or more of the parties hereto, or between any of the parties hereto and any person not a party hereto as to whether or not or to whom the Escrow Agent shall deliver all or any portion of the Escrow Fund, or in the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions with respect to the Escrow Fund which in its opinion are in conflict with any of the provisions of this Escrow Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep safely the Escrow Fund until it shall have been directed otherwise by a writing signed by the City and Alstores or by final order of a court of competent jurisdiction over the dispute. The Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of the City or Alstores to honor any of the provisions of the Sale and Construction Agreement. The Escrow Agent shall incur no liability hereunder whatsoever except in the event of willful misconduct or gross negligence as long as it has acted in good faith.

9. (a) The Escrow Agent shall be entitled to payment from time to time out of the Escrow Fund of (i) a fee for its services hereunder in such amount as the parties shall agree and (ii) any out-of-pocket expenses, including attorney's fees, incurred by it in performing its duties hereunder.

(b) The Escrow Agent may resign at any time upon not less than 60 days' prior written notice to Alstores and the City, provided that a successor Escrow Agent shall have been appointed prior to the effective date of such resignation. If a successor Escrow Agent shall not have been appointed by Alstores and the City within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. Every successor Escrow Agent appointed hereunder shall execute and deliver to Alstores, the City and the resigning Escrow Agent an instrument accepting such appointment, and thereupon such resignation shall become effective and the successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the resigning Escrow Agent; but on request of Alstores, the City or the successor Escrow Agent, such resigning Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent all the rights and powers of the resigning Escrow Agent, and shall duly assign, transfer and deliver to such successor Escrow Agent all property and money held by such resigning Escrow Agent hereunder.

(c) The Escrow Agent will report in writing every 60 days to the City and Alstores as to all transactions relating to investments of the Escrow Fund.

10. This Escrow Agreement shall bind and inure to the benefit of the parties, their successors and assigns.

11. This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

THE CITY OF BOSTON

By_____

_____
Title

ALSTORES REALTY CORPORATION

By_____

_____
Title

NEW ENGLAND MERCHANTS NATIONAL BANK

By_____

_____
Title

NOTICE

Re: Escrow Agreement dated as of
197 , among your Bank, Alstores Realty
Corporation and The City of Boston, and
the Sale and Construction Agreement
referred to therein

Dear Sirs:

Pursuant to paragraph 4 of the Escrow Agreement, we hereby notify you that the Construction Commitment Date referred to in the Sale and Construction Agreement occurred on [date to be inserted] and instruct you to deliver to us at [time and date to be inserted] at [address to be inserted] your official bank check in the lesser of the following amounts: (a) an amount equal to $2,500,000 plus interest from [insert Closing Date] to the date of payment at the rate provided in paragraph 4 of the Escrow Agreement and (b) the entire amount of the Escrow Fund.

Very truly yours,

ALSTORES REALTY CORPORATION

By_____

NOTICE

Re: Escrow Agreement dated as of
197 , among your Bank, Alstores Realty
Corporation and The City of Boston and
the Sale and Construction Agreement
referred to therein

Dear Sirs:

Pursuant to paragraph 4 of the Escrow Agreement, we hereby instruct you not to make payment in accordance with the letter dated , to you from Alstores Realty Corporation except pursuant to subsequent joint instructions from Alstores Realty Corporation and The City of Boston or an order of a court having jurisdiction.

Very truly yours,

THE CITY OF BOSTON

By_____

FORM OF PROMISSORY NOTES*

PROMISSORY NOTE NO. [(1)]

$200,000

New York, New York
[Closing Date]

LAFAYETTE PLACE ASSOCIATES, a Massachusetts partnership (the "Company"), FOR VALUE RECEIVED, hereby promises to pay to the order of ALSTORES REALTY CORPORATION (the "Payee"), at its office located at 1114 Avenue of the Americas, New York, New York, on the [(2)] anniversary of the date of this Note the principal sum of Two hundred thousand Dollars in lawful money of the United States of America.

The Company promises also to pay simple interest on the unpaid principal amount hereof in like money at said office (i) from the date of this Note until maturity (whether by acceleration or otherwise) at the rate not less than 8-1/2% nor more than 10-1/2% per annum but otherwise 1-1/2% in excess of the prime commercial lending rate of Manufacturers Hanover Trust Company in effect from time to time, such interest to be payable at maturity (whether by acceleration or otherwise) and (ii) after such maturity until paid at the rate of 11-1/2 percent per annum, such interest to be payable on demand.

This Note is one of ten Promissory Notes (the "Notes") delivered by the Company on [Closing Date] to the Payee. Upon the continuation for 15 days of any default in the payment of any part of the interest upon or principal of any of the Notes as and when the same shall become due and payable, or if the Company shall be judicially declared bankrupt or insolvent according to law or if a receiver, guardian, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Company's property by a court of competent juris-

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* Each Note is to be completed by inserting the Closing Date where "Closing Date" appears hereon in brackets and by inserting the respective number of the Note and the anniversary which the Note is to mature where "(1)" and "(2)" appear hereon in brackets as follows:

(1)	(2)
1	first
2	second
3	third
4	fourth
5	fifth
6	sixth
7	seventh
8	eighth
9	ninth
10	tenth

diction, or if a petition shall be filed for the reorganization of the Company under any provision of the Bankruptcy Act or similar legislation now or hereafter enacted and such proceeding is not dismissed within 30 days after it has begun or if the Company shall file a petition for such reorganization, under any provisions of the Bankruptcy Act or similar legislation now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts, then in any of such cases the Payee may declare the principal of all of the Notes to be due and payable immediately, and upon any such declaration the same shall become due and payable.

The Company may, at its option, at any time prior to the maturity of this Note, prepay without penalty, all or any part of the principal amount of this Note; provided, however, that (1) if less than all of the principal amount of this Note is prepaid, the principal amount so prepaid shall be $100,000 or an integral multiple thereof, and (2) the Company shall not prepay any part of the principal amount of this Note unless and until it shall have prepaid in full any of the Notes still outstanding having a maturity date later than the maturity date of this Note.

LAFAYETTE PLACE ASSOCIATES

ATTEST:

By MONDEV MASS., INC., General Partner

_____

By _____
(Title)

ATTEST:

By SEFRIUS CORP., General Partner

_____

By _____
(Title)

FORMS OF DEEDS

Deed to Bristol Parcel

ALSTORES REALTY CORPORATION, a Delaware corporation, having a principal place of business at 1114 Avenue of the Americas, New York City, New York, in consideration of Dollars paid, the receipt of which is hereby acknowledged, hereby grants to THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts, with QUITCLAIM COVENANTS, a parcel of land, sometimes known as the Bristol parcel, situated in Boston, Commonwealth of Massachusetts, shown on a plan hereinafter mentioned and bounded and described as follows:

NORTHWESTERLY by the southerly sideline of Harrison Avenue Extension 191.52 feet;

NORTHEASTERLY by the southerly sideline of Bedford Street 150.22 feet;

SOUTHEASTERLY by the northerly sideline of Chauncy Street 188.03 feet; and

SOUTHWESTERLY by the northerly sideline of Exeter Place 142.12 feet.

Containing according to said plan 28,874 square feet more or less.

Said plan, recorded herewith, is entitled "Plan of Land In Boston, Mass." dated May 15, 1975, and drawn by William S. Crocker, Inc.

Together with all right, title and interest of the Grantor, under, in and to those portions of Exeter Place, Harrison Avenue Extension, Bedford Street and the portion of Chauncy Street contiguous to the premises hereinn conveyed.

Subject to the terms and provisions of a license to maintain an area under the sidewalk in front of that portion of Bedford Street formerly numbered 33-35 Bedford Street, and indemnity agreement related thereto, dated September 5, 1889, and recorded with Suffolk Registry of Deeds, Book 1896, page 353.

For title of the Grantor, see deed from Tourner Holding Corp. to the Grantor, dated October 28, 1948, and recorded with said Deeds, Book 6479, Page 123 (the third parcel described therein).

IN WITNESS WHEREOF, said ALSTORES REALTY CORPORATION has caused its corporate seal to be hereto affixed and this Deed to be executed in its name and on its behalf by its Vice President, hereunto duly authorized.

ALSTORES REALTY CORPORATION

Attest: By:_____

_____

State of New York)
: ss.:
County of New York)

On this day of , 1978, before me appeared , to me personally known, who, by me being duly sworn, did say that he is the Vice President of ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the Commonwealth of Massachusetts, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and said acknowledged said instrument to be the free act and deed of said Corporation.

Notary Public

Deed to Annex Parcel

ALSTORES REALTY CORPORATION, a Delaware corporation, having a principal place of business at 1114 Avenue of the Americas, New York City, New York, in consideration of Dollars paid, the receipt of which is hereby acknowledged, hereby grants to THE CITY OF BOSTON, a municipal corporation in the Commonwealth of Massachusetts, with QUITCLAIM COVENANTS, a parcel of land, together with the improvements thereon, sometimes known as the Annex parcel, situated in said Boston, shown on a plan hereinafter mentioned and bounded and described as follows:

NORTHEASTERLY by the southerly sideline of Avon Street by five lines measuring 40.09 feet, 36.20 feet, 196.53 feet, 76.13 feet and 70.36 feet;

SOUTHEASTERLY by the northerly sideline of Chauncy Street by two lines measuring 17.38 feet and 93.07 feet;

SOUTHWESTERLY by the northerly sideline of Bedford Street by three lines measuring 68.23 feet, 248.14 feet and 107.38 feet; and

NORTHWESTERLY by the southerly sideline of Washington Street by two lines measuring 36.35 feet and 131.76 feet.

Containing according to said plan 58,295 feet more or less.

Included as part of the improvements herein conveyed is the bridge spanning Avon Street connecting the above described parcel with the building on the opposite side of the street.

Said plan, recorded herewith, is entitled "Plan of Land in Boston, Mass." dated May 15, 1975, and drawn by William S. Crocker, Inc.

Together with all right, title and interest of the Grantor of, under, in and to those portions of Avon, Chauncy and Washington Streets as are contiguous to the premises herein conveyed.

Subject to the terms and provisions of a license to maintain a coal hole under the sidewalk in front of that portion of Avon Street formerly numbered 15 Avon Street, and indemnity agreement related thereto, dated May 5, 1888, and recorded with the Suffolk County Registry of Deeds, Book 1820, Page 467, insofar as the same is presently in force and effect.

Subject to the provisions of Chapter 340 of the Acts of 1939 and Chapter 109 of the Acts of 1956, and further subject to two Agreements beween the City of Boston and Trustees of Avon Street Trust et als., dated August 16, 1939, and January 9, 1957, respectively, and recorded with said Deeds, Book 5819, Page 510 and Book 7215, Page 556, respectively.

For title of the Grantor, see deed from Tourner Holding Corp. to the Grantor, dated October 28, 1948, and recorded with said Deeds, Book 6479, Page 123 (the first and second parcels therein); deed from F. W. Woolworth Co. to the Grantor, dated January 15, 1959, and recorded with said Deeds, Book 7369, Page 239; deed from Beech Hill Realty, Inc. to the Grantor, dated October 4, 1961, and recorded with said Deeds, Book 7594, Page 125; and deed from Philip B. Buzzell et. al., Trustees of Avon Street Trust to the Grantor, dated September 15, 1957, and recorded with said Deeds, Book 7272, Page 441.

IN WITNESS WHEREOF, said ALSTORES REALTY CORPORATION has caused its corporate seal to be hereto affixed and this Deed to be executed in its name and on its behalf by its Vice President, hereunto duly authorized.

Attest: ALSTORES REALTY CORPORATION

_____ By:_____
Vice President

State of New York)
: ss.:
County of New York)

On this day of , 1978, before me appeared to me personally known, who, by me being duly sworn, did say that he is the Vice President of ALSTORES REALTY CORPORATION, a Delaware corporation qualified to do business in the Commonwealth of Massachusetts, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and said acknowledged said instrument to be the free act and deed of said Corporation.

_____
Notary Public

EXHIBIT E

MAINTENANCE AND EASEMENT AGREEMENT

Dated , 197

among

AL-JORDAN REALTY CORP.

JORDAN MARSH COMPANY

LAFAYETTE PLACE ASSOCIATES

and

THE CITY OF BOSTON

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MAINTENANCE AND EASEMENT AGREEMENT dated as of , 197 among AL-JORDAN REALTY CORP., a Massachusetts corporation ("Al-Jordan"), and JORDAN MARSH COMPANY (Boston), a Massachusetts corporation ("Jordan Marsh" and, so long as it shall own a fee or leasehold estate in the Jordan Marsh Facility referred to below, collectively with Al-Jordan referred to as "Jordan"), LAFAYETTE PLACE ASSOCIATES, a Massachusetts partnership ("Lafayette"), and, but only to the limited extent herein expressly set forth, THE CITY OF BOSTON, a municipal corporation (the "City"), acting by and through its Mayor and its Real Property Board. Jordan, the City and Lafayette are each hereinafter sometimes called "Party" and sometimes hereinafter collectively called "Parties".

WHEREAS, Alstores Realty Corporation, a Delaware corporation affiliated with Jordan ("Alstores"), Al-Jordan, Jordan Marsh, the City and the Boston Redevelopment Authority are parties to an Agreement dated as of August , 1978 (the "Sale and Construction Agreement") providing for the sale by Alstores and the purchase by the City of certain parcels of land located in downtown Boston, Massachusetts, described as the "Annex" and "Bristol" parcels on the site plan attached hereto as Exhibit A together with certain appurtenant easements and rights, including rights in certain ways;

WHEREAS, as provided in the Sale and Construction Agreement, Alstores has demolished the previously existing structures on certain parcels of land described collectively as the "Old Main and Shuman" parcel on the site plan attached hereto as Exhibit A, and has constructed thereon a new retail facility (which, together with the structures on a certain parcel of land described in Exhibit A as "Units 1, 2 and 3", constitute the "Jordan Marsh Facility");

WHEREAS, as provided in the Sale and Construction Agreement, the City has acquired or will acquire certain other parcels of land which, together with the Annex and Bristol parcels, are described in Exhibit A hereto as "Lafayette Place";

WHEREAS, the City, the Boston Redevelopment Authority and Lafayette are parties to a Tripartite Agreement, dated as of August , 1978 (the "Tripartite Agreement"), providing for the sale by the City and the purchase by Lafayette of air rights in, under and over Lafayette Place together with other rights appurtenant to such air rights, for the construction by the City of a garage (the "Garage") at and below the grade of Lafayette Place and other public improvements and for the construction in such air rights by Lafayette of a hotel, retail and commercial complex (said complex to be constructed by Lafayette being herein referred to as the "Lafayette Place Complex");

WHEREAS, Alstores and Lafayette are parties to an Agreement dated as of August , 1978 (the "Development Agreement"), pursuant to which Lafayette and Alstores

agree to undertake certain construction obligations relative to the Jordan Marsh Facility and the Lafayette Place Complex;

WHEREAS, it is the mutual desire of the Parties, in furtherance of the agreements referred to above, to exchange with each other certain easements and other rights in, to, through, upon, over, under and across their respective parcels and to make certain other covenants, agreements and provisions all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

Article One:

Definitions; Additions or Replacements

1.1. Terms Defined. Whenever used in this Agreement, the following terms defined in this Article have the following respective meanings:

"Combined Site" means the aggregate of the Jordan Tract and the Lafayette Tract.

"Fiscal Period" means a period of 12 consecutive calendar months commencing on the first day on which the Jordan Marsh Facility and any portion of the Lafayette Place Complex shall both be open for business and each period of 12 consecutive months thereafter.

"Jordan Tract" means the real property, whether or not under single ownership, designated as such on the site plan attached hereto as Exhibit A, and any structures from time to time located thereon.

"Lafayette Tract" means the real property, whether or not under single ownership, designated as such on the site plan attached hereto as Exhibit A, and any structures from time to time located thereon.

"Passageway" means the pedestrian passageway through the Jordan Marsh Facility on the Jordan Tract at the ground floor level extending from Summer Street to the Lafayette Tract in the location shown on the plan attached hereto as Exhibit C, and all accessory components forming a part thereof or used in connection therewith.

"Successor Facility" means (i) in the case of the Jordan Marsh Facility, any retail department store having a gross area of 200,000 square feet, including substantial selling space located on the main and second floors of the Jordan Marsh Facility adjacent to the entrances into the Lafayette Place Complex, and (ii) in the case of the Lafayette Place Complex, any complex of structures, in whatever form of ownership, devoted to hotel, retail, com-

mercial, or other non-manufacturing and non-warehousing use, provided, in either case, that such uses shall not be incompatible with the calibre and quality of the operations of the Jordan Marsh Facility or the Lafayette Place Complex, as the case may be.

"Truck Ramp" means the ramp and access area entering the Jordan Marsh Facility at grade from Chauncy Street and providing a single means of access to separate subterranean loading docks serving the Jordan Marsh Facility and the Lafayette Place Complex, and designated by shading on the plan attached hereto as Exhibit B and all accessory components forming a part thereof or used in connection therewith, except that the Truck Ramp shall not include the security closures serving exclusively the Jordan Marsh Facility and the Lafayette Place Complex, respectively, or any areas lying behind such security closures or, except as provided in Section 2.2(f), the area shown on such plan with cross-hatching.

1.2. Additions or Replacements. Notwithstanding anything to the contrary contained in Section 1.1, or elsewhere in this Agreement, any reference in any definition contained in Section 1.1 or elsewhere in this Agreement to any improvement shall be deemed also to refer to any expansion, reconstruction or replacement thereof pursuant to the provisions of this Agreement.

Article Two:

Grant of Easements

2.1. Definitions and Documentation. This Article Two sets forth certain easements and the terms and conditions thereof which certain of the Parties hereby grant to certain of the other Parties. As used in this Article, "in", when used with respect to an easement granted "in" a particular Tract, shall mean, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and/or "under".

As to the easements herein granted:

(a) the grant of a particular easement by a Grantor shall bind and burden the related Tract which shall, for the purpose of this Article, be deemed to be the servient tenement; but where only a portion thereof is bound and burdened by the particular easement, only that portion thereof so bound and burdened shall be deemed to be the servient tenement;

(b) the grant of a particular easement to a Grantee shall benefit the related Tract which shall, for the purposes of this Article, be deemed to be the dominant tenement.

All easements granted in this Article Two shall exist by virtue of this Agreement, without the necessity of confirmation by any other document; and likewise, upon the permitted extinguishment, expiration or termination of any easement, in whole or in part, or its release in respect of

all or any portion of any Tract, pursuant hereto, the same shall be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by any other document. However, each Party will, as to any easement(s), at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form acceptable to both or all such Parties, execute and acknowledge such a document memorializing the existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Tract, as the case may be, of any easement if the same shall have been so extinguished or released.

Except as herein otherwise expressly provided, all easements hereby granted in this Article Two are irrevocable, perpetual and non-exclusive and may be used, but only as appurtenant to the dominant tenement or any part thereof, in common with the owners from time to time of the servient tenement and those claiming rights therein (temporary or otherwise) by, through or under either of such owners.

2.2. Easement for Truck Ramp.

(a) Jordan grants to Lafayette the right and easement to use the Truck Ramp for vehicular travel from Chauncy Street to the subterranean loading facilities in the Lafayette Place Complex. Jordan grants to the City the right and easement to use the Truck Ramp to the extent necessary to service the public areas of the Lafayette Place Complex.

(b) Lafayette agrees that it will cause (i) that part of the Lafayette Place Complex owned by it that opens upon the Truck Ramp to be heated and ventilated and the temperature therein maintained within five degrees Fahrenheit of the temperature maintained by Jordan in the Truck Ramp, and (ii) positive air pressure to be maintained in those parts of the Lafayette Place Complex owned by it that open upon the Truck Ramp as compared to the air pressure maintained by Jordan in the Truck Ramp. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable under the circumstances.

(c) Jordan covenants with Lafayette to keep, maintain, repair, manage and operate the Truck Ramp in good and clean order, operation, condition and repair and in conformity with all requirements of law. Without limitation upon the foregoing, Jordan's obligations shall include duties to keep the Truck Ramp sprinklered, paved, marked, illuminated, policed, controlled by the traffic signal control system (to be installed pursuant to the Development Agreement), drained, cleared of refuse, heated and ventilated. Jordan shall make and use its best efforts to enforce reasonable rules and regulations of general application for the supervision, control and use of the Truck Ramp. Such rules and regulations and any amendment thereof shall not be effective without the prior approval of Lafayette, which shall not be unreasonably withheld, qualified or delayed,

and may (i) have particular regard to the special security requirements of the Jordan Marsh Facility and the Lafayette Place Complex and the effect on each of the Truck Ramp and (ii) prohibit the parking of any vehicles or any part thereof within the Truck Ramp. Except as otherwise agreed to in writing by Lafayette and except in emergencies or other temporary situations beyond the reasonable control of Jordan, the Truck Ramp shall be available for use by Lafayette 24 hours a day, 7 days a week.

(d) Without limitation upon the foregoing grant to Lafayette, the same includes the right to repair and reconstruct the Truck Ramp and all appurtenances thereto without, however, imposing any such obligation on Lafayette; provided, however, such right shall be exercised only if (x) the Truck Ramp shall have become physically or practically impassable, (y) Lafayette shall have given Jordan written notice of such condition and (z) Jordan shall have failed for five days after receipt of such notice to take all necessary action to commence repair or reconstruction or having taken such action, shall have failed diligently to continue repair or reconstruction to completion. All costs incurred by Lafayette in performing Jordan's obligations shall be promptly reimbursed by Jordan upon being billed therefor (except to the extent that Lafayette would have been obligated under Section 2.2(e) hereof to reimburse Jordan if such costs had been incurred by Jordan) and may be offset against sums due by Lafayette to Jordan under this Agreement to the extent such reimbursement is not made.

(e) Except as provided below, Jordan shall promptly pay for all costs incurred in connection with the performance of its obligations under this Agreement relative to the Truck Ramp during each Fiscal Period. For each Fiscal Period, Lafayette agrees to reimburse Jordan for (i) any costs incurred during such Fiscal Period by reason of the Truck Ramp's being open when no part of the Jordan Marsh Facility is open and (ii) one-half of the balance of such costs allocable to the Truck Ramp. Notwithstanding the foregoing, if the Truck Ramp is not regularly used by Lafayette as its main service vehicle entrance then the Parties shall renegotiate and reduce in a fair and equitable manner the share of such costs reimbursable by Lafayette to Jordan.

At least 60 days prior to the commencement of each Fiscal Period (180 days prior to the first Fiscal Period) Jordan shall forward to Lafayette a budget (appropriately itemized and broken down) for the Truck Ramp for the next following Fiscal Period. Budget items shall include but not be limited to costs of electricity, steam, gas (for heating), central monitoring and other security services, cleaning, maintenance, repairs, and payroll and other administrative expenses reasonably attributable to the Truck Ramp but shall not include real estate taxes and insurance premiums. Lafayette shall forthwith review and make comments upon such proposed budget to Jordan following which Jordan and Lafayette shall agree upon such costs and the allocation of certain elements

thereof. If agreement on a proposed budget relating to the Truck Ramp is not reached, then the budget for the preceding Fiscal Period shall be used, subject to final adjustment as herein provided. Thereafter, commencing upon the first day of the Fiscal Period to which such budget relates, Lafayette shall pay to Jordan in equal quarterly installments one-half (1/2) of the portion of the proposed budget relative to the Truck Ramp. Within 60 days after the close of each Fiscal Period Jordan and Lafayette shall review and agree upon the actual expenditures made for the Truck Ramp for such Fiscal Period and final adjustments shall be made, with Lafayette paying any balance due to Jordan or Jordan refunding any excess payments to Lafayette.

Each Party shall supply such information as the other party may reasonably request and is reasonably available in order to enable the foregoing provisions to be fairly administered.

(f) Lafayette shall have the non-exclusive right to use the area designated by cross-hatching on the plan attached hereto as Exhibit B for the sole purpose of enabling trucks to head into such area in order that they may back up to the loading docks within the Lafayette Place Complex. Such right shall be subject to the condition that (i) the use of such area by trucks going to the Lafayette Place Complex shall not materially interfere with the use of such area by Jordan or trucks going to the Jordan Marsh Facility or the access of Jordan to its compactor which is adjacent to such area and (ii) except as provided in the next sentence, the use of such area by Lafayette shall be restricted to such times as the existing security closure is open. If the existing security closure is removed and new security closures are installed at the locations shown on Exhibit B hereto, Lafayette shall be entitled, subject to the condition stated in clause (i) of the preceding sentence, to use such area for the purposes stated above 24 hours a day, 7 days a week, and such area shall be deemed part of the Truck Ramp.

(g) If any truck shall be too long to position itself for backing into the Lafayette Place Complex by using only the Truck Ramp and the area referred to in Section 2.2(f), Lafayette shall have the non-exclusive right, to the extent necessary for such truck to back into the Lafayette Place Complex and for no other purpose, to bring such truck into that part of the truck court floor forming a rectangle the corners of which are designated on Exhibit B hereto as H6, G6, G8 and H8. Such right shall be subject to the condition that the use by trucks going to the Lafayette Place Complex of that part of the truck court floor so designated (i) shall not materially interfere in any way with the use thereof by Jordan or trucks going to the Jordan Marsh Facility and (ii) shall be restricted to such times as the existing security closure or, if it shall be removed and the proposed new security closures shown on Exhibit B hereto installed, such new security closures shall be open.

(h) At any time after December 31, 2042, Jordan shall have the right to terminate the rights and easement

granted pursuant to this Section 2.2. Such termination may be effected only by notice to such effect given to the other parties or their successors in interest.

2.3. Easement for Passageway.

(a) Jordan grants to Lafayette the right and easement for its tenants, licensees, customers, agents and employees, and to the City the right and easement for persons using the Garage and the public areas of the Lafayette Place Complex, to use the Passageway for pedestrian travel between Summer Street and the Lafayette Place Complex.

(b) Lafayette agrees that it will cause (i) the temperature in that part of the Lafayette Place Complex owned by it that opens upon the Passageway to be maintained within three degrees Fahrenheit of the temperature maintained by Jordan in areas owned by Jordan abutting the Passageway and (ii) positive air pressure to be maintained in those parts of the Lafayette Place Complex owned by it that open upon the Passageway as compared to the air pressure maintained by Jordan in the Passageway. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable for a department store such as Jordan Marsh or any Successor Facility then occupying the Lafayette Place Complex.

(c) When the retail department store on the Jordan Marsh Facility is open for business, the door separating the Passageway from Summer Street and the door separating the Passageway from the Lafayette Place Complex (the "End Doors") shall be open or unlocked, all retractable partitions separating the Passageway from the surrounding store shall be retracted and no obstruction to pedestrian access between Summer Street and the Lafayette Place Complex shall be placed or allowed to remain within the Passageway. At all other times the End Doors shall remain unlocked and the Passageway shall remain available for unobstructed pedestrian access between Summer Street and the Lafayette Place Complex during such hours as Lafayette in its sole discretion shall determine, except that (i) Jordan may close and lock the End Doors in the case of emergencies or other temporary situations dangerous to it and (ii) if the Passageway shall be used other than for its intended purpose of access between Summer Street and the Lafayette Place Complex and Jordan shall give Lafayette reasonable prior notice (not to be less than five days) that keeping the End Doors unlocked during such hours as are specified in such notice has resulted in the creation of a nuisance or an otherwise unsafe or unsanitary condition as specified in said notice, Jordan may close and lock the End Doors during the hours specified in said notice unless Lafayette shall take such measures (which may include the stationing of a guard in the Passageway) as shall be required to prevent such nuisance or other condition.

(d) Following its initial construction, all changes to the design and decoration features of the interior of the Passageway and the implementation and pay-

ment of costs for such changes shall be subject to mutual agreement of Jordan and Lafayette.

(e) Except as hereinafter provided in this subparagraph (e), Jordan shall, at its own expense, keep the Passageway illuminated, cleaned, cleared of refuse, heated, ventilated, air conditioned, painted and in good state of repair and, through use of security personnel and systems used by it to provide security for the retail department store, provide reasonable security for the Passageway. Lafayette shall, at its own expense, during such hours as the retail department store on the Jordan Marsh Facility is not open for business, provide illumination, heating, ventilation, air conditioning and security (through security guards or closed circuit television surveillance systems or other security systems) for the Passageway, using for these purposes sources of air supply and electricity within the Lafayette Place Complex. Lafayette shall have the right to perform obligations of Jordan with respect to the Passageway without, however, imposing any such obligations on Lafayette; provided, however, such right shall be exercised only if (x) the Passageway shall have become physically or practically impassable, (y) Lafayette shall have given Jordan written notice of such condition and (z) Jordan shall have failed for 5 days after receipt of such notice to take all necessary actions to commence maintenance, repair or reconstruction or, having taken such action, shall have failed diligently to continue such maintenance, repair or reconstruction to completion. All costs incurred by Lafayette in performing Jordan's obligations shall be reimbursed by Jordan upon being billed therefor (except to the extent that Lafayette would have been obligated under this Section 2.3(e) to reimburse Jordan if such costs had been incurred by Jordan) and may be offset against sums due by Lafayette to Jordan under this Agreement to the extent such reimbursement is not made.

For each Fiscal Period, Lafayette shall reimburse to Jordan the following costs incurred by Jordan:

(i) 50% of any costs incurred by Jordan during such Fiscal Period in keeping the Passageway, End Doors and retractable partitions painted and in good state of repair; and

(ii) any costs incurred during such Fiscal Period by Jordan in providing security or in cleaning or clearing the Passageway of refuse that would not have been incurred in the absence of such Passageway.

At least 60 days prior to the commencement of each Fiscal Period (180 days prior to the first Fiscal Period), Jordan shall forward to Lafayette a budget and statement of costs incurred for the Passageway for the next following Fiscal Period, which shall properly itemize and break down the aforesaid costs which are to be shared or borne by Lafayette. Lafayette shall forthwith review such proposed budget and

promptly notify Jordan of any items in the budget which it disputes. If it shall fail to notify Jordan within 30 days after receipt of such proposed budget of any item which it disputes, Lafayette shall be deemed to have agreed to such budget. If agreement on a proposed budget relating to the Passageway is not reached, then the budget for the preceding Fiscal Period shall be used, subject to final adjustment as herein provided. Thereafter, commencing on the first day of the Fiscal Period to which such budget relates, Lafayette shall pay to Jordan in equal quarterly installments the portion of such budget for which Lafayette shall be obligated to reimburse Jordan as hereinabove provided. Within 60 days after the close of each Fiscal Period, Jordan and Lafayette shall review and agree upon the actual expenditures made for the Passageway for such Fiscal Period and final adjustments shall be made, with Lafayette paying any balance due to Jordan or Jordan refunding any excess payments to Lafayette.

After completion of the initial construction of the entrance (including, without limitation, doors, display cases and canopy) to the Passageway from Summer Street shown on Exhibit C hereto and the initial construction (if any) of an entrance to the subway at such location, Jordan shall not make any material alterations to the design of said entrances except with the consent of Lafayette or as required by law or any governmental authority.

(g) At any time after December 31, 2042, Jordan shall have the right to terminate the rights and easements granted pursuant to this Section 2.3. Such termination may be effected only by notice to such effect given to the other parties or their successors in interest.

2.4. Structural Easements. The Jordan Marsh Facility and the Lafayette Place Complex will abut at their southern and northern sidelines, respectively, approximately along the northern sideline of the public way now or formerly known as Avon Street. The Parties desire to establish the right of Jordan to continue the maintenance of certain presently existing encroachments by subsurface portions of the Jordan Marsh Facility in said former way and to provide for future easements, for structural purposes, benefiting both the Jordan Marsh Facility and the Lafayette Place Complex. Consistent therewith:

(a) The City and Lafayette hereby grant to Jordan an easement to maintain the presently existing subsurface encroachments shown on Exhibit D.

(b) The City, Lafayette and Jordan hereby each grant to the other non-exclusive easements appurtenant to the property of each for the purpose of constructing and maintaining foundations and footings.

The foundations, footings, walls and other structural parts of the Jordan Marsh Facility and the Lafayette Place Complex were not designed for and shall not be used for structural support of structures on the Lafayette Tract or on the Jordan Tract, respectively.

Where the installation or maintenance of supports in or affecting the walls or other components of any structure on either the Jordan Tract or the Lafayette Tract shall make the same necessary, the Party undertaking such installation or maintenance agrees to repair and restore such walls or other components at its own expense. Such Parties shall make proper installation of such supports and such footings and shall maintain all such supports and such footings in good condition and state of repair at all times. Further, in the exercise of its rights hereunder, each Party shall take such measures as shall be required to avoid unreasonable interference with the use of the Tract of another Party and the businesses thereon and all damage caused by the exercise of rights hereunder to the property of another Party shall be forthwith corrected by and at the expense of the Party causing such damage so that the property so damaged shall be restored to substantially the condition in which it was prior to such damage. Each party hereby agrees to defend, indemnify and hold harmless the others from any and all expenses, costs or liability for any injury or damage which may arise or be claimed to have arisen out of the exercise by the indemnifying Party of its rights hereunder.

Article Three:

Other Easements, Licenses and Rights to use of Jordan Marsh Facility and Lafayette Place Complex

3.1. Definitions and Documentation. This Article Three sets forth certain other easements, licenses and rights and the terms and conditions thereof which certain of the Parties hereby grant to certain of the other Parties.

As used in this Article, "in", when used with respect to an easement, license or right granted "in" a particular Tract, shall mean, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and/or "under".

All such easements, licenses, and rights granted in this Article shall exist by virtue of this Agreement, without the necessity of confirmation by any other document; and likewise, upon the permitted extinguishment, expiration or termination of any easement, license, or right in whole or in part, or its release in respect of all or any portion of any Tract, pursuant hereto, the same shall be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by any other document. However, each Party will, as to any easement(s), license(s), or rights(s), at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form acceptable to the relevant other Parties, execute and acknowledge such a document memorializing the existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Tract, as the case may be, of any easement, license, or right if the same shall have been so extinguished or released.

Except as herein otherwise expressly provided, all easements, licenses and rights hereby granted in this Article Three are irrevocable, perpetual and nonexclusive and may be used in common with the owners from time to time of the Tract benefitted thereby or any part thereof and those claiming rights therein (temporary or otherwise) by, through or under any of such owners.

3.2. Rights to use of Jordan Marsh Facility, and Lafayette Place Complex. In recognition of the fact that the Jordan Marsh Facility and Lafayette Place Complex are designed and intended to appear and to be used as an integrated commercial complex, effective at the commencement of the first Fiscal Period:

(a) Lafayette and the City grant to Jordan and its tenants, licensees, customers, agents and employees, the non-exclusive right and license for unimpeded access to the Lafayette Place Complex at the abutting openings of the Jordan Marsh Facility and the Lafayette Place Complex as shown on Exhibit E hereto and, to the extent that tenants, licensees, customers, agents and employees of Lafayette shall have access to the Garage, through the Lafayette Place Complex to the Garage, provided that access to the Garage shall not be deemed to include corridors, secured entrances, or other access, not available generally to persons within the Lafayette Place Complex. Such right and license shall always be exercised:

(i) in common with others entitled thereto;

(ii) without any right of priority in the use of or access to the same over others entitled thereto;

(iii) subject to all reasonable rules and regulations imposed by Lafayette upon all users;

(iv) subject to the establishment by Lafayette of the schedule of days and hours during which the same are to be open, provided that in all events the same shall remain open at such times as the Jordan Marsh Facility shall be open;

(v) subject to the right of Lafayette to make such use of and to rearrange and place structures in adjacent common areas as Lafayette may from time to time desire so long as access from the Jordan Marsh Facility remains unimpeded; and

(vi) subject to the right of Lafayette to terminate such access to the Lafayette Place Complex if a department store doing business under the name of Jordan Marsh or a Successor Facility ceases to be operated on the Jordan Tract.

(b) Jordan grants to Lafayette and its tenants, licensees, customers, agents and employees the non-exclusive right and license for unimpeded access to the Jordan Marsh Facility at the abutting openings of the Jordan Marsh Facil-

ity and Lafayette Place Complex, as shown on Exhibit E hereto. Such right and license shall always be exercised:

(i) in common with others entitled thereto;

(ii) without any right of priority in the use of or access to the same over others entitled thereto;

(iii) subject to all reasonable rules and regulations imposed by Jordan upon all users;

(iv) subject to the establishment by Jordan of the schedule of days and hours during which the same are to be open provided that, in all events, the same shall remain open when the Jordan Marsh Facility is open;

(v) subject to the right of Jordan to make such use of and to rearrange and place structures in areas adjacent thereto as Jordan may from time to time desire so long as access from the Lafayette Place Complex remains unimpeded; and

(vi) subject to the right of Jordan to terminate the same at all abutting levels if the Lafayette Place Complex or a Successor Facility ceases to be operated on the Lafayette Tract.

(c) with respect to certain of the areas subject to the right and license granted to Jordan and Lafayette in subparagraphs (a) and (b), above, for so long as such right and license shall be in effect:

(i) Jordan agrees that when the Jordan Marsh Facility is open there shall be direct and unimpeded access from the location marked on Exhibit E hereto as "Second Floor Access" to the main customer circulation aisle system in the Jordan Marsh Facility, and

(ii) Lafayette agrees that when the Jordan Marsh Facility is open there shall be direct and unimpeded access from all locations referred to in clause (i) above to the main public pedestrian aisle system of the Lafayette Place Complex.

(d) For a distance of 50 feet from the openings between the Jordan Marsh Facility and the Lafayette Place Complex there shall not occur at any time within the Lafayette Place Complex without the consent of Jordan, (i) any sales activity involving loudspeakers or similar devices creating unreasonable noise, (ii) the sale or service of food or beverages, (iii) the sale of animals, (iv) the operation of any amusement arcade or other facility having pinball machines or similar devices, or (v) the sale or display of pornographic materials.

(e) Lafayette agrees that it will cause (i) the temperature in that part of the Lafayette Place Complex owned by it that opens upon the Jordan Marsh Facility at the

entrances shown on Exhibit E hereto to be maintained within three degrees Fahrenheit of the temperature maintained by Jordan in the portions of the Jordan Marsh Facility abutting such entrances and (ii) positive air pressure to be maintained in those parts of the Lafayette Place Complex owned by it that open upon the Jordan Marsh Facility at such entrances as compared to the air pressure maintained by Jordan in the portions of the Jordan Marsh Facility abutting such entrances. The aforesaid agreements of Lafayette are subject to the condition that the temperature and air pressure maintained by Jordan are reasonable for a department store such as Jordan Marsh or any Successor Facility then occupying the Lafayette Place Complex.

(f) It is not intended that the provisions of this Section 3.2 limit the grants to or rights of Lafayette set forth in Section 2.3.

3.3. Emergency Egress Easements. Lafayette and the City hereby grant to Jordan non-exclusive easements over the Lafayette Tract for the sole purpose of providing emergency egress in the event of fire from the Jordan Tract. The precise location of such easements shall be determined by Lafayette but in all events shall be such as to satisfy all legal requirements for egress from the side of the Jordan Marsh Facility presently bounded by Avon Street and to obtain approval and acceptance by all municipal authorities provided that in no event shall the locations of the openings in the wall of the Jordan Marsh Facility giving access to such easements be changed from their present locations without the consent of Jordan. The areas subject to such easements may, to the extent permitted by law, be used in conjunction with ordinary operations of the Lafayette Place Complex and as a means of providing emergency egress therefrom. Further, and notwithstanding the foregoing, Lafayette shall have the right to relocate or alter such easements as it may consider necessary or appropriate in connection with the construction, operation, maintenance or reconstruction of the Lafayette Place Complex or any part thereof; provided, however, that any such relocation or alteration by it hereunder shall be at its expense and shall be consistent with all legal requirements for emergency fire egress from the Jordan Marsh Facility and the location of the then-existing emergency fire openings from the Jordan Marsh Facility shall not be changed. Concurrently with the initial determination of their location and thereafter upon any such relocation the Parties shall execute such documents as shall be necessary to reflect such initial location or relocation, as the case may be, of record.

Unless and until such easements shall be used by Lafayette, all costs attributable to the maintenance and operation thereof shall be borne by Jordan. However, upon any use of such easements by Lafayette to any extent whatever, all of such costs attributable to such easement used shall thereafter be borne equally by the Parties.

3.4. Easements for Air Supply and Exhaust. Lafayette agrees that the Lafayette Place Complex shall be

designed and constructed so as to provide adequate air supply and exhaust through the supply and exhaust air grilles presently existing in the south wall of Units 1 and 3 and hereby grants to Jordan an easement over the Lafayette Place Complex to the extent necessary for such purpose. Maintenance and repair of the air supply and exhaust systems shall be the responsibility and at the expense of Jordan except that if the systems shall serve the Truck Ramp or Passageway the responsibility for and the cost of maintenance and repair shall be borne as provided in Sections 2.2 and 2.3 hereof. Lafayette agrees that the design and construction of the systems shall meet with Jordan's approval.

Article Four:

Insurance

4.1. Liability Insurance. Commencing with the start of the first Fiscal Period at its expense Jordan shall maintain or cause to be maintained general public liability insurance against claims for personal injury or death and property damage, occasioned by accident, omission or negligence occurring upon, in, on or about the Jordan Tract and any structures thereon or improvements thereto (including the Passageway and Truck Ramp) and any sidewalks relating thereto. Lafayette shall maintain general public liability insurance against claims for personal injury or death and property damage, occasioned by accident, omission or negligence occurring upon, in, on or about the Lafayette Tract, and any structures thereon or improvements thereto (exclusive of areas subject to the Emergency Egress Easements created under Section 3.2 hereof, unless Lafayette shall use the same) and any sidewalks relating thereto, such insurance in each case to afford protection to the limit of not less than $5,000,000 per occurrence in respect of injury or death, and such insurance against property damage to afford protection to the limit of not less $1,000,000 per occurrence. The insurance coverage required under this Section 4.1 shall, in addition, extend to any liability of the Parties arising out of the indemnities provided for in Section 8.2 hereof. Solely with respect to such liability, the required policies shall name Jordan and Lafayette as insureds, as their respective interests may appear.

4.2. Casualty Insurance. Commencing with the start of the first Fiscal Period, Jordan shall continuously keep or cause to be kept the Jordan Marsh Facility (including the Truck Ramp and Passageway) insured, at its own expense against loss or damage by fire and such other risks as are from time to time included in "extended coverage" endorsements available in Boston, Massachusetts, customarily maintained on comparable property in the New England area (including in all events demolition and increased cost of restoration endorsements), and in an amount at least sufficient to avoid the effect of coinsurance provisions of the policies, and in an amount not less than eighty per cent (80%) of the current actual replacement cost of the Jordan Marsh Facility (including the Truck Ramp and Passageway),

but nothing herein shall require Jordan to revise insurance coverage more frequently than annually. Such policies shall contain the clauses as to the payment of the proceeds thereof described in Section 5.2 hereof. Any policies maintained by Jordan against the risks set forth in the first sentence of this Section 4.2 shall provide for waiver of subrogation against Lafayette.

4.3. Form of Policies. All insurance required by this Article to be maintained by any Party shall be effected under valid and enforceable policies issued by insurers of recognized responsibility and at rates competitive with those generally available for similar coverage in the greater Boston area. The insurance to be maintained by any Party under Sections 4.1 and 4.2 hereof may be taken out under blanket insurance policies covering other premises, property or insureds in addition to that required hereunder, but only so long as the limits required by Sections 4.1 and 4.2 hereof are maintained in effect and separately designated for the Jordan Marsh Facility and the Lafayette Place Complex, respectively. Further, such policies may provide for deductibles not to exceed as to liability insurance $100,000 and as to casualty insurance $100,000, provided that at the request of a Party not maintaining such insurance such deductible sums shall be reduced by the Party maintaining such insurance upon payment by the requesting party of the additional premium charge incurred thereby.

The original or a copy of the policies (whether initial or renewal) required by this Article to be maintained by either Jordan or Lafayette, or a certificate of the insurer or its agent as to the effectiveness of such policies, shall be delivered to the other not less than 15 days prior to the date when the applicable insurance is required to be provided under this Agreement, and, thereafter, not less than 15 days prior to the expiration dates of the expiring policies. Any policy required by this Article shall provide that such policy shall not be cancelled or amended in any material respect without at least ten days' prior notice to Lafayette and Jordan.

Article Five:

Restoration

5.1. Jordan's Obligations with Respect to Restoration. In the event of any damage or destruction to or condemnation of all or any part of the Jordan Marsh Facility (including, without limitation, any damage or destruction or condemnation which interferes with or prohibits the full and unimpeded use and enjoyment of the Truck Ramp or Passageway as contemplated hereby) and as often as any such damage or destruction or condemnation shall occur, Jordan shall repair, restore and rebuild the Jordan Marsh Facility to substantially the condition existing or required to be existing prior to such damage or destruction (including, without limitation, such repair, restoration and rebuilding as is necessary to insure full and unimpeded use of the

Truck Ramp and Passageway by Lafayette) or, in the case of a condemnation to the extent reasonably practicable, except that the size of the Jordan Marsh Facility may be changed as Jordan shall determine provided that prior to December 31, 2018 there shall be at least 140,000 square feet of floor space on the Main and Second Floors and prior to December 31, 2003 there shall be at least 400,000 square feet of floor space appropriate for use as selling area (as that term is used as of the date hereof by Allied Stores Corporation) which may include stock and fitting rooms.

The obligations of Jordan hereunder to repair, restore or rebuild shall be commenced and continued to completion with due diligence in recognition of the fact that time is of the essence and that the availability at all times of the Truck Ramp and Passageway is of utmost concern to the respective Parties. The work of repair, restoration or rebuilding, when once commenced by Jordan, shall be carried through continuously to conclusion by it, subject only to delays in obtaining labor or materials or other matters (but expressly excepting financing matters) which are beyond Jordan's reasonable control. The policy or policies of insurance required of Jordan pursuant to Section 4.2 hereof shall contain a clause providing that any loss under the same shall be payable, to the extent required for the repair, restoration or rebuilding of the Jordan Marsh Facility as required hereby, to The First National Bank of Boston, or to such other bank or trust company as Jordan and Lafayette may designate, or, if Jordan so requires, to the institutional holder of any mortgage on the Jordan Tract, in each case, as trustee; it being understood, however, that all amounts collected on any such policy or policies shall be made available to Jordan for the repair, restoration or rebuilding hereby required and shall be paid out by the said trustee, from time to time as the work of repair, restoration and rebuilding shall progress, upon architects' certificates (by architects licensed to do business in the Commonwealth of Massachusetts), showing the application of the amount paid for such repairs, restoration or rebuilding. If the damage is such that the insurance award is for less than $250,000 then the insurance award shall be paid directly over to Jordan, without the necessity of payment to the trustee, as otherwise provided for in this Article; but this shall not be construed as relieving Jordan from the terms of this Article. It is agreed that any excess of money received from insurance remaining with the trustee after the required reconstruction or repair has been completed shall be paid to Jordan.

5.2. Mortgage and Insurance Proceeds. Any mortgage placed on the Jordan Tract, or any renewals or replacements thereof, or any agreement otherwise extending or modifying the same, shall contain a provision whereby the mortgagee shall agree, acquiesce and consent that any insurance proceeds resulting from a loss on such property received by such mortgagee shall be held by it in trust for the purpose of paying for the cost of repairing, restoring or rebuilding the Jordan Marsh Facility (including Truck Ramp and Passageway) in accordance with the provisions of

Section 5.1 hereof. Notwithstanding anything contained herein to the contrary, if any mortgagee holding a first mortgage covering the Jordan Tract shall require that insurance proceeds be applied in payment of indebtedness secured by such mortgage then such proceeds may be so applied but if and only if, before such application, the assent thereto of Lafayette shall have been obtained in writing. Such consent shall not be withheld if Jordan shall, simultaneously with the request for such consent, deliver to Lafayette substitute security reasonably acceptable to it such as cash or of a cash-equivalent nature (such as a letter of credit). Such substitute security shall be in an amount equal to the lesser of the amount of insurance proceeds required to be applied to payment of indebtedness or the costs of repair, restoration or rebuilding.

5.3. Termination. The obligations of Jordan under this Article Five shall terminate on December 31, 2042.

Article Six:

Conveyance, Assignment or Other Transfer

6.1. Assignment. (a) Each of the Parties may convey, assign or otherwise transfer its rights hereunder at any time without the approval of the others, but only subject to the provisions of this Article. As used in this Article, the "Jordan Release Date" means 10 years from the date of this Agreement. As used in this Article, the "Lafayette Release Date" means the date that a Certificate of Completion shall have been issued or be deemed to have been issued by the Boston Redevelopment Authority with respect to the Lafayette Place Complex (both retail and hotel) pursuant to the Tripartite Agreement.

(b) If Jordan or any other owner from time to time of all or any part of the Jordan Tract or any interest therein having any liability or obligation arising hereunder shall transfer all its interest in the Jordan Tract, such transferor shall, from and after the Jordan Release Date or the date of such transfer, whichever is later, be relieved of all liability and obligations thereafter arising hereunder and incurred by it as the owner of such interest, and if Lafayette or any other owner from time to time of all or any part of the Lafayette Tract or any interest therein having any liability or obligation arising hereunder shall transfer all its interest in the Lafayette Tract, such transferor shall, from and after the Lafayette Release Date or the date of such transfer, whichever is later, be relieved of all liability and obligations thereafter arising hereunder and incurred by it as the owner of such interest; provided, however, any such relief shall be subject to the conditions that no default shall have occurred and be continuing in the performance of any term, covenant, condition or agreement to be performed hereunder by the owners of the Tract which (or an interest in which) is the subject of such transfer and that the transferee shall execute and deliver to the non-

transferring parties, or their successors in title, an instrument in recordable form by which such transferee assumes and agrees to perform and be bound by all the terms, covenants, conditions and agreements hereunder to be performed by the owners of such Tract.

(c) Nothing contained or implied in this Agreement shall prevent or limit the assignment by any Party of all or any part of its rights hereunder to any one or more lenders who shall be providing permanent or construction financing relative to either the Jordan Marsh Facility or Lafayette Place Complex, such assignment to be upon such terms and conditions as such lender may require (except that no such assignment shall limit or defeat the rights of the Parties hereunder). Jordan and Lafayette agree that the execution of any such assignment by either of them and the acceptance thereof by any lender, shall not constitute an assumption by the lender of any of the obligations of such assigning Party under this Agreement, unless and until such lender shall, by written notice sent to such non-assigning Party, specifically assume the obligations of the assigning Party under this Agreement or unless and until such lender succeeds, by foreclosure, or voluntary conveyance in lieu of foreclosure, to the interest of such assigning Party under this Agreement.

Article Seven:

Garage

7.1. Access to Garage. The City agrees that if requested by Jordan and consented to by Lafayette (but only with such consent) the City will grant to Jordan an easement for direct access (as distinguished from the indirect access provided in Section 3.2) from the Jordan Marsh Facility to the Garage located on the Lafayette Tract. In the event of such request and consent, the City will execute and deliver to Jordan an appropriate instrument in recordable form providing for such easement. If a retail department store of not less than 100,000 square feet of selling area (which may include stock and fitting rooms) shall hereafter be constructed on the Lafayette Tract or immediately adjacent thereto and there shall be direct access between such store and the Garage, Lafayette will, if requested by Jordan, give its consent to such an easement on terms no more favorable than those available to such retail department store but shall not otherwise be required to give such consent.

Article Eight:

Miscellaneous

8.1. Certain agreements concerning rights granted under this Agreement. (a) As used in this Section 8.1:

(i) "Grantor" means a Party granting an easement, license or other right under this Agreement, and

(ii) "Grantee" means a Party and its permitted successors and assigns to which an easement, license or other right has been granted under this Agreement.

(b) None of the Parties makes any representations to any other hereunder relative to the quality of title to the areas to which easements and licenses granted hereby relate except that Jordan Marsh agrees that its leasehold estate in the Jordan Tract is subject and subordinate to this Agreement. Further, certain of the easements and licenses granted herein may relate to areas in which, as of the date of execution hereof, the Grantor has no legal interest. However, the Grantor of each easement and license hereunder intends and agrees that, to the extent that rights in such areas are hereafter acquired, the doctrine of title by estoppel shall apply to the end that acquisition by the Grantor subsequent to the execution hereof of any interest in such areas shall automatically result in the transfer of such interests to the Grantee of such easement or license to the extent necessary to effect the purposes of this Agreement.

(c) Except as herein otherwise expressly provided, to the maximum extent permissible according to law, all covenants, conditions and agreements contained herein, affecting the use and maintenance of the Jordan Tract and Lafayette Tract, shall be deemed to be covenants running with the land and shall bind and inure to the benefit of the Parties and their respective successors and assigns and any Successor Facility.

(d) Except as otherwise herein expressly provided, this Agreement shall continue and the obligations hereunder shall remain binding from the date hereof.

To the extent, and only to the extent, that rights and restrictions contained in this Agreement are determined to be subject to the Rule against Perpetuities, or to the operation of any rule relative to restraints on alienation and the limitation thereof, such rights and restrictions shall be of force and effect only during the maximum period during which any such rules would not render the same unenforceable. Where the lives of persons are the measuring standards for the application of such rules, such lives shall be of the individuals signing this Agreement and their spouses, and the issue of such persons living at the date of this Agreement. Consistent therewith, as of the date of this Agreement, to the extent that rights and restrictions in this Agreement should be determined to be subject to any such rules, the same shall be of force and effect only during the period which ends 21 years (or such longer period as may hereafter be allowed by law) following the last to die of those persons referred to above and the issue now living of such persons, and, thereafter, shall be of no further force and effect.

8.2. Indemnification. Jordan will indemnify and save Lafayette harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, in connection with the loss of life,

personal injury, damage to property, injury to reputation and right of privacy, and claims of false arrest, or any of them, in, on or about the Combined Site (except inside the buildings on the Lafayette Tract, provided that this exception shall not encompass those areas subject to the Emergency Egress Easements referred to in Section 3.3 hereof unless Lafayette shall use the same) including the Truck Ramp and Passageway occasioned wholly or in part by any act or omission of Jordan or its tenants, agents, contractors or employees, and Lafayette will indemnify and save Jordan harmless from and against any and all of the above set forth claims, actions, damages, liability and expense including reasonable attorneys' fees in, on or about the Combined Site (except inside the buildings on the Jordan Tract) including the Truck Ramp and Passageway occasioned wholly or in part by any act or omission of Lafayette, or their tenants, agents, contractors or employees. If and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage from responsible insurance companies (even though extra premium may result therefrom): Jordan and Lafayette agree that, with respect to any hazard which is covered by insurance then being carried by them, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss to the extent so covered; and they further mutally agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

8.3. Recordation. This Agreement shall be recorded against the Jordan Tract and the Lafayette Tract and the fees for such recording shall be shared equally by Lafayette and Jordan.

8.4. Remedies for Breaches. In the event that any party shall fail to comply with or violate any of the provisions of this Agreement, then the other Party hereto entitled to the benefit of such provision may, without limiting any rights specifically set forth in this Agreement on account of such failure or violation, institute such actions and proceedings as may be appropriate and permissible under this Agreement, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs.

8.5. No Waiver. No waiver of any default by any Party hereto shall be implied from any omission by any other Party hereto to take any action in respect of such default, whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Party hereto to or of any act or request by any other Party hereto requiring

consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Except as otherwise herein specifically provided, the rights and remedies of each Party hereto under the terms of this Agreement shall be deemed to be cumulative and none of such rights and remedies shall be exclusive of any others, or of any right or remedy at law or in equity which any Party hereto might otherwise have from a default under this Agreement and the exercise of any right or remedy by a Party hereto shall not impair any such Party's standing to exercise any other right or remedy.

8.6. No Personal Liability. No officer, director or stockholder, as such, of Jordan or Lafayette has any personal liability to the other or to anyone claiming through or under the other. No tenant of any store or licensee or concessionaire with respect to any space within the Lafayette Tract and no owner of the fee or leasehold estate in the portion of the Lafayette Tract devoted to hotel use shall have any personal liability for the payments or any other obligations hereunder except for such obligations as such tenant, licensee, concessionaire or owner shall willfully breach.

8.7. No Relationship of Principal and Agent. Neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by any Party hereto or by any third person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any association between the Parties hereto.

8.8. Severability; Governing Law. If any part of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such part to any other persons or circumstances, shall not be affected thereby, and each part of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement may be cancelled, modified or amended only pursuant to a written agreement and shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts and shall be binding upon the Parties, their respective successors and assigns (but this shall not be interpreted as permitting a conveyance, assignment, or other transfer prohibited hereby).

8.9. Matters to be Disregarded. The titles to the several Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

8.10. Status Report. The Parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees, or the like, the then current status of performance hereunder. Accordingly, any party, on the

written request of another Party made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement, provided that nothing herein shall require any Party to provide information unknown to it or which, in its reasonable opinion, is of such a confidential nature that its disclosure to third parties is unwarranted. Consistent therewith, the Parties specifically agree to execute such documents as may be appropriate permanently to memorialize dates which are, at present, uncertain and the establishment of which is necessary to determine periods of time for which obligations run.

8.11. Supplemental Documents. Recognizing that problems and requirements may arise in connection with the joint and separate action to be taken by the Parties pursuant to the terms of this Agreement (including requirements relative to financing) all of which cannot now be anticipated in full, each of the Parties agrees to execute and deliver such other and further instruments (including, when as a result of design or construction the easement referred to in Sections 2.4(b), 3.3 and 3.4 shall have been determined specifically, instruments defining such easements specifically) as may be reasonably requested by another Party or any lender providing financing to such other Party, so long as such other and additional agreements are consistent with the terms and provisions hereof, shall not impose additional obligations on any Party, shall not deprive any Party of any privileges herein granted to it, and shall be in furtherance of carrying out the intent and purpose of the agreements herein expressed.

8.12. Arbitration. Disputes relating to items and amounts for which Lafayette shall be obligated to Jordan as provided in Sections 2.2 and 2.3 hereof shall be decided by arbitration. Such arbitration shall be in Boston, Massachusetts, and shall be undertaken in accordance with the Rules of the American Arbitration Association then obtaining. The arbitrator shall, if at all possible, be versed in large-scale commercial real estate development and shall render an award which shall explicitly set forth, in detail, the reasons therefor. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of the demand for arbitration shall be filed in writing with the other Party and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Article Nine:

Extent of City as a Party

9.1. Extent of City as a Party. The City joins in this Agreement as a Party only to the following extent:

The City hereby agrees that the grants, terms, conditions and provisions of this Agreement may be modified or amended, without the prior consent of the City except where such modification or amendment would substantially reduce or impair public rights of passage in and to the Truck Ramp, the Passageway and other portions of either Tract to which rights have previously been granted to the City. The City shall be given prior notice of any proposed modification or amendment to this Agreement and the same shall be considered as not substantially reducing or impairing such public rights of passage if the City shall assent thereto or shall fail, within fifteen days after such notice shall have been given, to object thereto.

Article Ten:

Notices

10.1. Notices. Every notice, demand, request, consent, approval or other communication which any Party is required or desires to give or make or communicate upon or to any other Party shall be effective and valid only when in writing and shall be given or made or communicated by mailing the same by registered or certified mail, postage prepaid, return receipt requested, as follows:

(a) If to Jordan:

c/o Jordan Marsh Company
Boston, Massachusetts
Attention:

and

c/o Alstores Realty Corporation
1114 Avenue of the Americas
New York City, New York 10036
Attention:

or at such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

(b) If to the City:

or at such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

(c) If to Lafayette:

or to such other address or addresses as such Party shall from time to time and at any time designate by notice to the others.

Every notice, demand, request or other communication sent shall be deemed to have been given, made or communicated, as the case may be, if mailed, two days after the time that the same shall have been deposited, properly addressed with postage prepaid, in the United States mails.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, and their respective seals to be hereunto affixed and attested, as of the day and year first above written.

AL-JORDAN REALTY CORP.

ATTEST:

_____ By_____
[Title]

JORDAN MARSH COMPANY

ATTEST:

_____ By_____
[Title]

LAFAYETTE PLACE ASSOCIATES

ATTEST: By: MONDEV MASS., INC.
General Partner

_____ By_____
[Title]

By: SEFRIUS CORP.
ATTEST: General Partner

_____ By_____
[Title]

CITY OF BOSTON

ATTEST:

_____ By_____
Mayor

By_____
Commissioner of Real Property

[Appropriate notarial acknowledgments to be added]

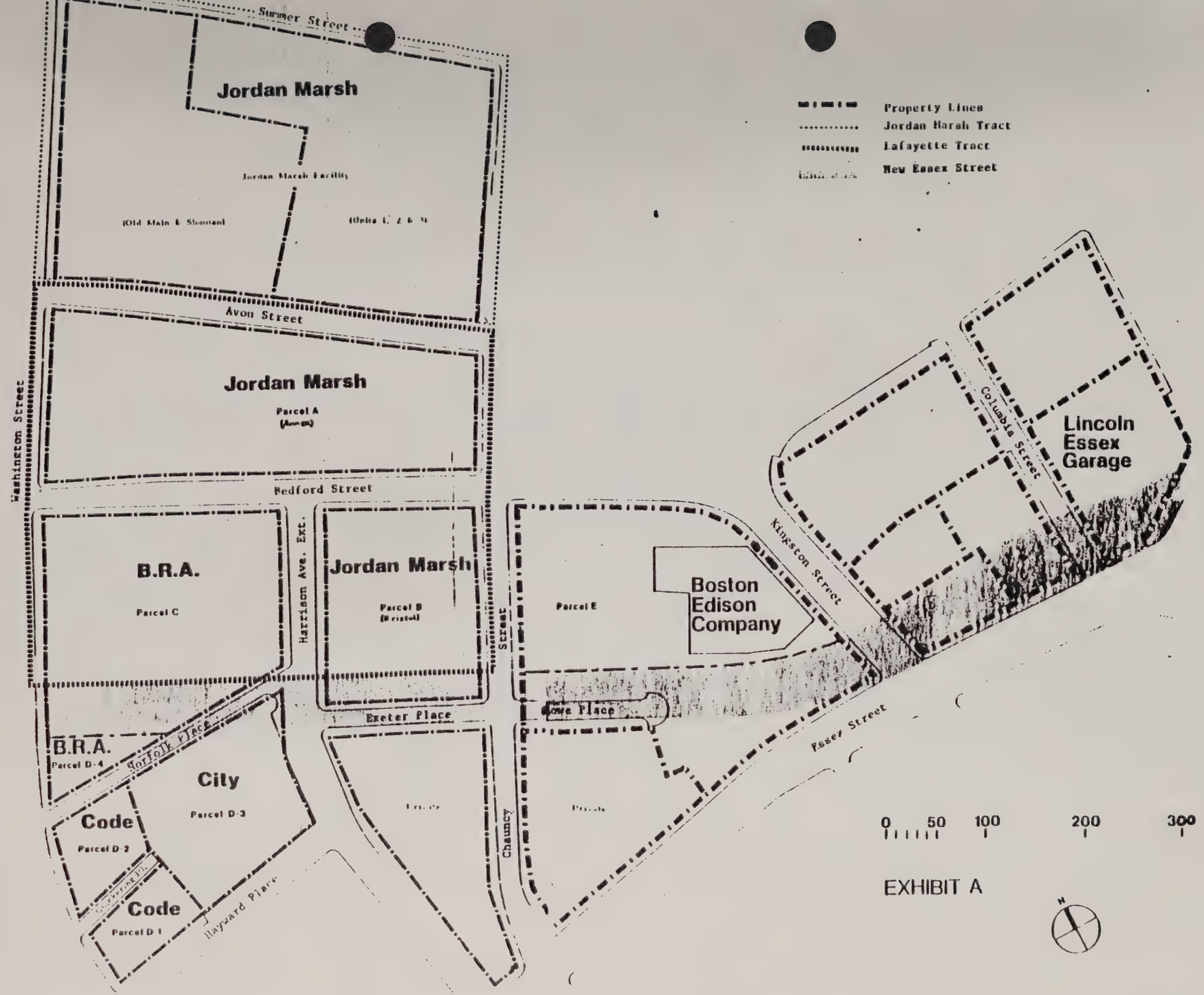

Summer Street
Jordan Marsh
Jordan Marsh Facility
(Old Main & Sherman)
Avon Street
Jordan Marsh
Parcel A
Washington Street
Redford Street
B.R.A.
Parcel C
Harrison Ave. Ext.
Jordan Marsh
Parcel B
Exeter Place
Norfolk Place
B.R.A.
Parcel D-4
City
Parcel D-3
Code
Parcel D-2
Code
Parcel D-1
Hayward Place
Chauncy Street
Parcel E
Boston Edison Company
Kingston Street
Dove Place
Essex Street
Columbia Street
Lincoln Essex Garage
Property Lines
Jordan Marsh Tract
Lafayette Tract
New Essex Street
0 50 100 200 300
EXHIBIT A

EXHIBIT A

Proposed New Security Closure

Existing Security Closure

EXHIBIT B

PLAN OF TRUCK RAMP

EXHIBIT C

Plan of Passageway

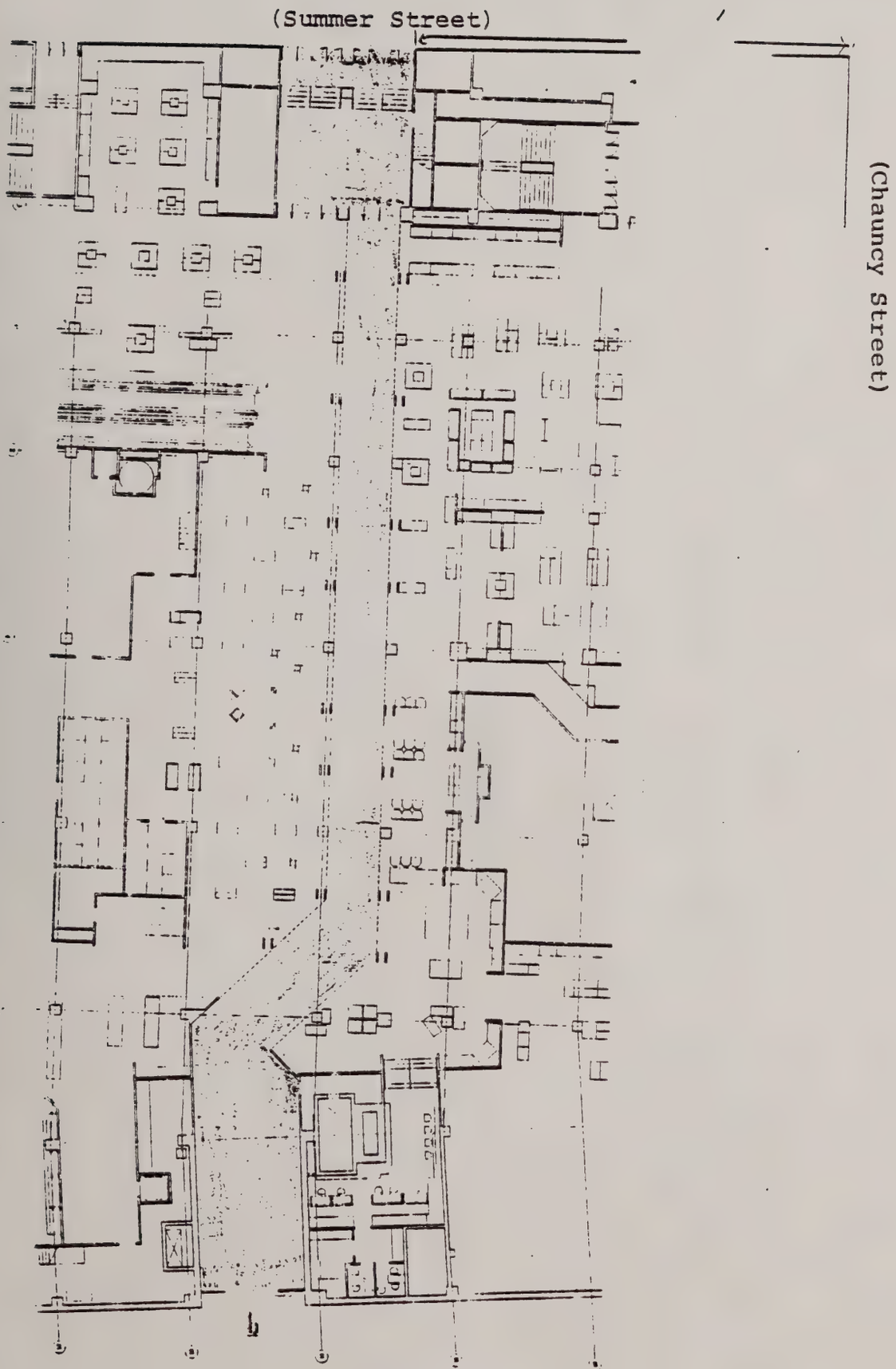
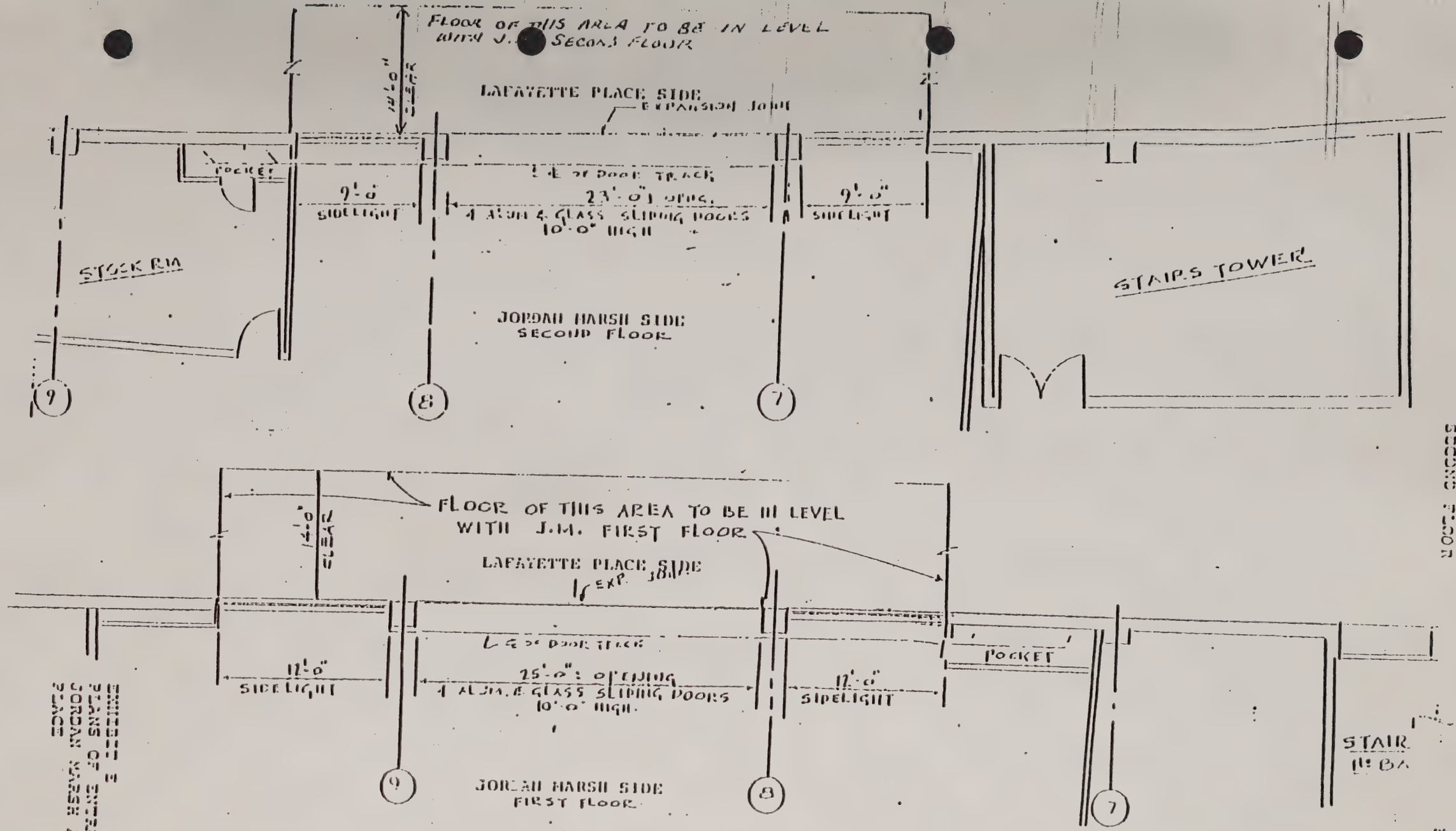


EXHIBIT D

CHAUNCY
STREET
AVON
STREET
WASHINGTON
STREET
BUILDING No 1
BUILDING No 2
MAIN BUILDING
EXHIBIT D
APPROXIMATION OF EXISTING ENCROACHMENTS IN AVON ST
SCALE 1"=50'-0"
0
50
100


FLOOR OF THIS AREA TO BE IN LEVEL WITH J.M. SECOND FLOOR
14'-0" CLEAR
LAFAYETTE PLACE SIDE
EXPANSION JOINT
POCKET
9'-0" SIDELIGHT
23'-0" OPNG. 4 ALUM. & GLASS SLIDING DOORS 10'-0" HIGH
9'-0" SIDELIGHT
STOCK RM
STAIRS TOWER
JORDAN MARSH SIDE SECOND FLOOR
9
8
7
FLOOR OF THIS AREA TO BE IN LEVEL WITH J.M. FIRST FLOOR
14'-0" CLEAR
LAFAYETTE PLACE SIDE
EXP.
POCKET
11'-0" SIDELIGHT
25'-0" OPENING 4 ALUM. & GLASS SLIDING DOORS 10'-0" HIGH
11'-0" SIDELIGHT
STAIR
JORDAN MARSH SIDE FIRST FLOOR
9
8
7
SECOND FLOOR
FIRST FLOOR

Form of Operating Covenant

AGREEMENT, dated [insert Closing Date] by AL-JORDAN REALTY CORP., ("Al-Jordan") and JORDAN MARSH COMPANY (BOSTON) ("Jordan Marsh") both Massachusetts corporations having their principal place of business at 450 Washington Street, Boston, Massachusetts.

IN CONSIDERATION OF Ten Dollars and other valuable consideration the receipt of which is hereby acknowledged, Al-Jordan and Jordan Marsh hereby enter into the following covenants with The City of Boston, a municipal corporation of the Commonwealth of Massachusetts; as the owner of the parcels of land described in Annex I hereto:

1. Al-Jordan and Jordan Marsh covenant that until the tenth anniversary of the date hereof, there will be operated by Jordan Marsh on the parcels of land described in Annex II hereto a department store under the name of Jordan Marsh having a selling area (as hereinafter defined) of not less than 400,000 square feet, and until the 25th anniversary of the date hereof, there will be operated on the parcel of land described in Annex II hereto a department store of the same quality and standards as the store presently operated thereon having a selling area of not less than 400,000 square feet. "Selling area" as used herein means "selling area" as used generally on the date hereof by Allied Stores Corporation, a Delaware corporation, with respect to stores owned directly or indirectly by it and shall include stock and fitting rooms. The requirement for operation by Jordan Marsh shall not be deemed to exclude the operation of some (but not all) departments by tenants, licensees or concessionaires of Jordan Marsh.

2. The covenant of Al-Jordan and Jordan Marsh herein is subordinate to the lien of any mortgage or deed of trust now or hereafter held by any institutional lender affecting the parcels of land described in Annex II hereto and the improvements thereon. Any purchaser in any foreclosure proceeding or pursuant to any exercise of a power of sale or any grantee under a deed in lieu of foreclosure and all successors to any such purchaser or grantee shall take said real property free and clear of the covenant herein and any default thereunder.

3. If the performance of the covenant herein is prevented by act of God, war, labor dispute or other cause beyond the reasonable control of Al-Jordan or Jordan Marsh, such covenant shall be suspended for such time as such performance is so prevented.

4. The covenant herein shall run with the land and shall bind Al-Jordan, Jordan Marsh and their successors in interest to the parcels described in Annex II hereto and enure to the benefit of the City of Boston and its successors in interest to the parcels described in Annex I hereto.

IN WITNESS WHEREOF, Al-Jordan and Jordan Marsh have caused this agreement to be executed, and their respec-

tive seals to be hereunto affixed and attested, as of the day and year first written.

AL-JORDAN REALTY CORP.

Attest: By_____

_____

JORDAN MARSH COMPANY (BOSTON)

Attest: By_____

_____

[add (1) appropriate notarial acknowledgements, (2) as Annex I a description of the parcels comprising the Lafayette Place Complex and (3) as Annex II a description of the parcels comprising the Jordan Marsh Facility]

CITY OF BOSTON
OFFICE OF THE MAYOR
CITY HALL, BOSTON

KEVIN H. WHITE
MAYOR

4 August 1978

To the City Council:

Gentlemen:

I transmit herewith and recommend that you approve certain orders and petitions concerning the redevelopment and revitalization of the downtown retail district. The orders and petitions are required in order to implement the modifications and revisions made to the previously approved Lafayette Place Project. The proposed orders and petitions are as follows:

a. An order authorizing the Mayor to execute a tripartite agreement by and between the City of Boston, the Boston Redevelopment Authority, and Lafayette Place Associates, whereby the retail area of downtown will be rejuvenated through the coordination of public and private endeavors. Said agreement basically contains modifications to the previously approved agreement in order to carry out an improved and consolidated redevelopment plan for Lafayette Place. In addition, the order authorizes the Mayor to execute a sales and construction agreement concerning the project by and among the Boston Redevelopment Authority, the City of Boston, Alstores Realty Corporation, Al-Jordan Realty Corporation and Jordan Marsh. Said sales and construction agreement authorizes the City, acting through the Real Property Board, to purchase the land adjacent to the existing Jordan Marsh Department Store for the purpose of implementing the Lafayette Place Project.

b. An order authorizing the Mayor to execute such other and further documents necessary to implement the tripartite agreement and the sales and construction agreement.

c. An order amending an appropriation and borrowing order of the City Council dated June 23, 1975 relative to the site assembly, design, and construction of public parking facilities for Lafayette Place so as to authorize the City of Boston, acting through the Real Property Board, to construct a new underground garage and to renovate the existing Hayward Place Parking Facility (if economically feasible) in order to provide a total of 1500 parking spaces as part of the modified and revised tripartite agreement for Layfayette Place and to appropriate a sum of $25 million to carry out said activities.

d. An order authorizing the Real Property Board, with the consent of the Mayor, to sell/or lease the City owned land on which the Lincoln-Essex Streets parking facility is located to the Boston Edison Company in order to implement the Lafayette Place Project. The June 23, 1975 City Council approval authorized the Real Property Board to seek legislative approval, through a Home Rule Petition, to sell said parcel which legislative approval was given. This order now seeks to implement that approval.

e. A Home Rule Petition to the General Court seeking permission for the Real Property Board to sell, lease, or otherwise transfer surplus space above, within or contiguous to parking facilities.

f. An order authorizing the Real Property Board, with the consent of the lessee, to cancel the existing lease with Code Realty, Inc. on the Hayward Place Parking Facility and to sell, lease, or otherwise transfer the land and structure in accordance with the above-described tripartite agreement.

I urge your speedy and favorable approval of the within legislative proposals in order to carry out the revised Lafayette Place Project.

Respectfully,

Kevin H. White
Mayor

REAL PROPERTY DEPARTMENT
JOANNE A. PREVOST
Commissioner
BERNARD W. CALLAHAN
Assistant Commissioner

CITY OF BOSTON

H + N.D.

REAL PROPERTY DEPARTMENT
811 NEW CITY HALL
1 CITY HALL SQUARE
BOSTON, MASSACHUSETTS 02201
725-4100 725-4104

August 4, 1978

Honorable Kevin H. White
Mayor of Boston
City Hall
Boston, Massachusetts 02201

Your Honor:

Attached for your approval and transmittal to the City Council are several orders that are necessary to implement the revised Lafayette Place Project.

Very truly yours,

Joanne A. Prevost

Joanne A. Prevost
Commissioner of Real Property
Chairman, Real Property Board

JAP/oc
Enc.

CITY COUNCIL RESOLUTIONS

WHEREAS, certain resolutions were adopted by the City Council on June 23, 1975 relating to a proposal by Sefrius Corporation with respect to a public and private redevelopment proposal known as Lafayette Place in the City of Boston (the "City"): and

WHEREAS, Sefrius Corporation has amended such proposal to provide for the organization of Lafayette Place Associates, a Massachusetts partnership (the "Developer") which will act as the developer of a restructured public and private redevelopment project (the "Project") to be known as Lafayette Place and including the design and construction within the area bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Hayward Place and Washington Street:

a) of public improvements by the City, including parking spaces for about 1,500 automobiles, at least 900 of which spaces will be located within a new, subterranean public parking garage, and

b) of private improvements by the Developer in air-rights above, within and contiguous to said new parking garage, consisting of an integrated retail, commercial, office and hotel complex;

WHEREAS, the City acting through its Mayor and its Real Property Board and the Developer propose to enter into a Tripartite Agreement with the Boston Redevelopment Authority (the "Authority") concerning the Project;

WHEREAS, the City and the Authority propose also to enter into a Sale and Construction Agreement with Alstores Realty Corporation, Al-Jordan Realty Corp., and Jordan Marsh Company (Boston) in implementation of the Project;

WHEREAS, the Authority on August 3, 1978 and the Real Property Board on July 31, 1978 have adopted certain resolutions with respect to and in implementation of the Project;

WHEREAS, it is intended that the Project will be undertaken by the Developer under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended; and

WHEREAS, the Project includes land located within and adjacent to the Bedford-West Urban Renewal Project, which was approved by the City Council on April 23, 1973; and

WHEREAS, the City Council finds that the Project will reverse the economic decline of the downtown retail area of the City, facilitate efficient land use within the area, improve traffic flow, and expand the real property tax base of the area; and

WHEREAS, the City Council finds that the public improvement program described in the proposed Tripartite Agreement, including said new public parking garage, and the private improvements described therein will serve a public purpose, and that certain aspects of such private improvements require integration with the public improvements

in order to bring the public benefits under Chapter 474 of the Acts of 1946 and Chapter 121A of the General Laws to full fruition; and now therefore be it

ORDERED,

That the Mayor be, and is hereby, authorized and empowered to execute said Tripartite Agreement concerning the Project by and among Lafayette Place Associates, the Boston Redevelopment Authority and the City of Boston, and to execute said Sale and Construction Agreement concerning the Project by and among the Boston Redevelopment Authority, the City of Boston, Alstores Realty Corporation, Al-Jordan Realty Corp. and Jordan Marsh Company (Boston), in substantially the form this day filed with the City Clerk, but with such amendments to either as the Mayor may determine to be necessary or desirable to achieve realization of the Project, provided that both Agreements, as executed, are satisfactory to the Corporation Counsel;

and be it further

ORDERED,

That the Mayor be, and hereby is, authorized and empowered to execute such other and further documents as may be necessary to effect and implement the terms and provisions of such Tripartite Agreement and said Sale and Construction Agreement; provided, however, that nothing herein contained shall be deemed to authorize the Mayor to derogate substantially the terms and provisions of either of said Agreements;

and be it further

ORDERED,

That the execution and delivery by the Mayor of any document approved by the Corporation Counsel and purporting to be executed and delivered pursuant to the foregoing resolutions shall be conclusively treated as authorized by the foregoing resolutions;

and be it further

ORDERED,

That the appropriation and borrowing order adopted by the City Council on June 23, 1975 relating to the acquisition of land and the design, construction and renovation of public parking facilities in the City of Boston be amended so that it reads as follows:

ORDERED,

That under the provisions of Section 5C and 5D of Chapter 474 of the Acts of 1946, as amended, the sum of $25 million be, and the same is hereby, appropriated for the acquisition and clearance of land and the design and construction by the Real Property Board of a public parking garage and related improvements and the renovation of an existing public parking garage, providing total parking for approximately 1,500 vehicles, said garages to be located within the area bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Hayward Place and Washington Street, and that to meet said appropriation the Collector-Treasurer be, and is hereby, authorized under the provisions of Sections 5C and 5D of Chapter 474 of the Acts of 1946, as amended, to issue from time to time, on request of the Mayor, bonds, notes, or certificates of indebtedness of the City to said amount.

and be it further

ORDERED,

Pursuant to Chapter 801 of the Acts of 1975, the Real Property Board is authorized with the consent of the Mayor to sell the land on which the Lincoln-Essex Streets parking garage is located in the manner and in accordance with terms and conditions to be agreed upon between the City of Boston, acting by and through its Real Property Board, and Boston Edison Company.

and be it further

ORDERED,

That a Petition to the General Court, accompanied by a bill for a special law relating to the City of Boston, be, and hereby is approved under Clause 1 of Section 8 of

Article 2 as amended, under the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be enacted providing substantially as follows:

Section 1. In addition to its powers under Chapter 474 of the Acts of 1946, as amended, and notwithstanding anything to the contrary therein or in Chapter 456 of the Acts of 1974, the Real Property Board of the City of Boston may, with the approval of the Mayor and City Council of said City, exercise the following powers on behalf of said City: the power to sell, lease or otherwise convey, lease, or otherwise transfer air rights and other rights and interests above, within and contiguous to any parking facility and any expansion thereof, including, without limitation, air rights and other rights and interests in all or any part of the parcels and improvements thereon bounded by Norfolk Place, Harrison Avenue Extension, Hayward Place and Washington Street, and Chauncy Street, Bedford Street, Kingston Street and Essex Street, at private sale, conveyance, lease, or other transfer, upon such terms as said Board deems satisfactory.

and be it further

ORDERED,

Pursuant to Chapter 456 of the Acts of 1974 and with the consent of the Mayor, the Real Property Board is authorized, with the consent of the lessee, to cancel the lease between the City of Boston and Code Realty, Inc. dated the twenty-ninth day of August, 1956 in accordance with the Settlement Agreement with Code Realty, Inc. dated June 20, 1978; and is further authorized pursuant to said Chapter 456 of the Acts of 1974 and in accordance with the above-described Tripartite Agreement between the City of Boston, Boston Redevelopment Authority and Lafayette Place Associates to sell, convey, lease or otherwise transfer the land and structure or structures, if any, thereon in the manner and upon the terms and conditions set forth therein.

3603

Boston City Council

NEW CITY HALL
ONE CITY HALL SQUARE
BOSTON, MASSACHUSETTS 02201

RAYMOND L. FLYNN

September 27, 1978

ORDERED: That the Boston City Council's Committee on Housing and Neighborhood Development advertise the public hearing to be held on Tuesday, October 3, 1978 at 10:00 A.M. in the Council Chamber on Docket #3603 before the committee; and be it further

ORDERED: That a stenographer be present at that time to record these proceedings

In City Council SEP 27 1978
Passed

City Clerk

CITY OF BOSTON
IN CITY COUNCIL

October 11, 1978

The Executive Committee to which was referred today Docket #3603 "Message, orders and petitions re: Lafayette Place Project", having considered the same, submits a report recommending that the orders and petitions OUGHT TO PASS IN THE FOLLOWING NEW DRAFT:

For the Committee:

Christopher A. Iannella

Christopher A. Iannella
Chairman

CITY COUNCIL RESOLUTIONS

WHEREAS, certain resolutions were adopted by the City Council on June 23, 1975 relating to a proposal by Sefrius Corporation with respect to a public and private redevelopment proposal known as Lafayette Place in the City of Boston (the "City"); and

WHEREAS, Sefrius Corporation has amended such proposal to provide for the organization of Lafayette Place Associates, a Massachusetts partnership (the "Developer") which will act as the developer of a restructured public and private redevelopment project (the "Project") to be known as Lafayette Place and located on real property to be acquired by the City within the area bounded generally by Avon Street, Chauncy Street, Bedford Street, Kingston Street, New Essex Street (to be dedicated), Harrison Avenue Extension, Hayward Place and Washington Street; the Project consisting of:

a) public improvements by the City, including parking spaces for about 1,500 automobiles, at least 900 of which spaces will be located within a new, subterranian public parking garage, and

b) private improvements by the Developer in air-rights and other rights acquired by the Developer from the City above, within and contiguous to said new parking garage, consisting of an integrated retail, commercial, office and hotel complex;

WHEREAS, the City acting through its Mayor and its Real Property Board and the Developer propose to enter into a Tripartite Agreement with the Boston Redevelopment Authority (the "Authority") concerning the Project;

WHEREAS, the City and the Authority propose also to enter into a Sale and Construction Agreement with Alstores Realty Corporation, Al-Jordan Realty Corp., and Jordan Marsh Company (Boston) in implementation of the Project;

WHEREAS, the Authority on August 3, 1978 and the Real Property Board on July 31, 1978 have adopted certain resolutions with respect to and in implementation of the Project;

WHEREAS, it is intended that the Project will be undertaken by the Developer under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended; and

WHEREAS, the Project includes land located within and adjacent to the Bedford-West Urban Renewal Project, which was approved by the City Council on April 23, 1973; and

WHEREAS, the City Council finds that the Project will reverse the economic decline of the downtown retail area of the City, facilitate efficient land use within the area, improve traffic flow, and expand the real property tax base of the area; and

WHEREAS, the City Council finds that the public improvement program described in the proposed Tripartite Agreement, including said new parking garage, and the private improvements described therein will serve a public purpose, and that certain aspects of such private improvements require integration with the public improvements in order to bring the public benefits under Chapter 474 of the Acts of 1946 and Chapter 121A of the General Laws to full fruition; AND NOW, THEREFORE, BE IT

ORDERED:

That the Mayor be, and is hereby, authorized and empowered to execute said Tripartite Agreement concerning the Project by and among Lafayette Place Associates, the Boston Redevelopment Authority and the City of Boston, and to execute said Sale and Construction Agreement concerning the Project by and among the Boston Redevelopment Authority, the City of Boston, Alstores Realty Corporation, Al-Jordan Realty Corp. and Jordan Marsh Company (Boston), in substantially the form this day filed with the City Clerk, but with such amendments to either as the Mayor may determine to be necessary or desirable to achieve realization of the Project, provided that both Agreements, as executed, are satisfactory to the Corporation Counsel; any change in said Tripartite Agreement to provide for a different land use than that presently contemplated by said Tripartite Agreement shall require further City Council approval; AND BE IT FURTHER

ORDERED:

That the Mayor be, and hereby is, authorized and empowered to execute such other and further documents as may be necessary to effect and implement the terms and provisions of such Tripartite Agreement and said Sale and Construction Agreement consistent with the preceding paragraph, provided that such documents be filed with the City Clerk fourteen days prior to their execution for public inspection and that notice of said filing shall be served simultaneously with each city councillor, including, without limitation, documents providing for the transfer of air-rights and other rights in the Project area to the Developer; provided, however, that nothing herein contained shall be deemed to authorize the Mayor to change substantially the terms and provisions of either of said Agreements; AND BE IT FURTHER

ORDERED:

That the execution and delivery by the Mayor of any document approved by the Corporation Counsel and purporting to be executed and delivered pursuant to the foregoing resolutions shall be conclusively treated as authorized by the foregoing resolutions; AND BE IT FURTHER

ORDERED:

That the appropriation and borrowing order adopted by the City Council on June 23, 1975 relating to the

acquisition of land and the design, construction and renovation of public parking facilities in the City of Boston be amended so that it reads as follows:

ORDERED:

That under the provisions of Section 5C and 5D of Chapter 474 of the Acts of 1946, as amended, the sum of $17 million be, and the same is hereby, appropriated for the acquisition and clearance of land and the design and construction by the Real Property Board of a public parking garage and related improvements and the renovation of an existing public parking garage, providing total parking for approximately 1,500 vehicles, said garages to be located within the area bounded generally by Avon Street, Chauncy Street, Exeter Place, Harrison Avenue Extension, Hayward Place and Washington Street, and that to meet said appropriation the Collector-Treasurer be, and is hereby, authorized under the provisions of Sections 5C and 5D of Chapter 474 of the Acts of 1946, as amended, to issue from time to time, on request of the Mayor, bonds, notes, or certificates of indebtedness of the City to said amount. AND BE IT FURTHER

ORDERED:

Pursuant to Chapter 801 of the Acts of 1975, the Real Property Board is authorized with the consent of the Mayor to sell the land on which the Lincoln-Essex Streets parking garage is located in the manner and in accordance with terms and conditions to be agreed upon between the City of Boston, acting by and through its Real Property Board, and Boston Edison Company; AND BE IT FURTHER

ORDERED:

That a Petition to the General Court, accompanied by a bill for a special law relating to the City of Boston, be, and hereby is approved under Clause 1 of Section 8 of Article 2 as amended, under the Amendments to the Constitution of the Commonwealth of Massacbusetts, to the end that legislation be enacted providing substantially as follows:

Section 1. In addition to its powers under Chapter 474 of the Acts of 1946, as amended, and notwithstanding anything to the contrary therein, the Real Property Board of the City of Boston may, with the approval of the Mayor and City Council of said City, exercise the following powers on behalf of said City: the power to sell, lease or otherwise transfer air rights and other rights and interests above, within and contiguous to any parking facility and any expansion thereof, including, without limitation, air rights and other rights

and interests in all or any part of the parcels and improvements thereon bounded by Norfolk Place, Harrison Avenue Extension, Hayward Place and Washington Street, and Chauncy Street, Bedford Street, Kingston Street and Essex Street, at private sale, conveyance, lease, or other transfer, upon such terms as said Board deems satisfactory. AND BE IT FURTHER

ORDERED:

Pursuant to Chapter 456 of the Acts of 1974 and with the consent of the Mayor and the City Council, the Real Property Board is authorized, with the consent of the lessee, to cancel the lease between the City of Boston and Code Realty, Inc. dated the twenty-ninth day of August, 1956 in accordance with the Settlement Agreement with the Code Realty, Inc. dated June 20, 1978; and is further authorized pursuant to said Chapter 456 of the Acts of 1974 and in accordance with the above-described Tripartite Agreement between the City of Boston, Boston Redevelopment Authority and Lafayette Place Associates to sell, convey, lease or otherwise transfer the land and structure or structures, if any, thereon in the manner and upon the terms and conditions set forth therein.

OCT 11 1978

In City Council _____

Read once and passed yeas nine

_____ City Clerk

OCT 25 1978

In City Council _____

Read a second time and passed yeas nine

_____ City Clerk

Approved _____ Mayor

The foregoing loan order is not in my opinion, to meet a current expense.

_____

Mayor.

11/8/78:JBW

TRIPARTITE AGREEMENT

AMONG

CITY OF BOSTON

BOSTON REDEVELOPMENT AUTHORITY

AND

LAFAYETTE PLACE ASSOCIATES

dated

November 8, 1978

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TRIPARTITE AGREEMENT

AGREEMENT made as of this 8th day of November, 1978 by and among the CITY OF BOSTON, a municipal corporation ("City"), acting by and through its Mayor and its Real Property Board, the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts ("Authority"), and LAFAYETTE PLACE ASSOCIATES, a general partnership (the "Developer") whose partners are Mondev Mass., Inc., a Massachusetts corporation, and Sefrius Corp., a Delaware corporation.

W I T N E S S E T H:

WHEREAS, with the assistance of the federal, state and city governments, the Authority is carrying out the Bedford West Urban Renewal Project pursuant to the Bedford West Urban Renewal Plan approved by the Authority on February 8, 1973, by the Boston City Council on April 23, 1973, by the Mayor of Boston on April 30, 1973, by the Massachusetts Department of Community Affairs on May 23, 1973, as amended by proclaimer dated May 2, 1974, and recorded at Suffolk County Registry of Deeds, Book 8777, Page 650;

WHEREAS, the City, the Authority and Developer desire to carry out the proposed development sometimes known as Lafayette Place;

WHEREAS, the aspects of the Project will be located in air rights within, above and contiguous to three parcels of land (Parcels A, B and C) and portions of certain streets to be discontinued, all of which parcels and streets are to be acquired by the City and are shown on the plan annexed hereto and marked Exhibit A;

WHEREAS, incident to the Project the City will enter into arrangements for the acquisition of five additional parcels of land and improvements thereon and the discontinuance and acquisition of streets adjacent thereto, which parcels are designated Parcels D-1, D-2, D-3, D-4 and E and

which parcels and streets are shown on Exhibit A;

WHEREAS, the Bedford West Urban Renewal Project is a part of the Project;

WHEREAS, the City and the Authority have entered into the Cooperation Agreement annexed hereto and marked Exhibit B and pursuant to which the City and the Authority have agreed to take certain actions in furtherance of the Bedford West Urban Renewal Project;

WHEREAS, certain public improvements are to be constructed by the City and the Authority incident to the Project;

WHEREAS, the City and the Authority have determined that the Project and the aforesaid public improvements are in the best interests of the City and the public good and welfare;

WHEREAS, the City, acting by and through its Real Property Board, has determined that the Parking Garage to be undertaken by it pursuant to this Agreement and its relationship to the Project is reasonable and in furtherance of Chapter 474 of the Acts of 1946, as amended, and special acts supplementing the power of the Real Property Board under said Chapter 474, as amended;

WHEREAS, the City, acting by and through its Real Property Board, has determined that said Parcels A, B, C, D-1, D-2, D-3 and D-4 and Parcel E (as shown on Exhibit A), are appropriate for parking facilities but that such portions of such Parcels as are not devoted to parking facilities and facilities in support thereof constitute surplus air-space unnecessary or inappropriate for parking facilities above, within or contiguous to the parking facilities to be constructed pursuant to this Agreement;

WHEREAS, the Developer intends to form a partnership under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended, and to undertake certain of the non-public portions of the Project in accordance therewith, thereby serving public uses by eliminating decadent

and substandard areas, providing increased employment opportunities for the citizens of the City, stabilizing land values in the area, and assuring the City of needed revenue;

WHEREAS, the Developer and the City have determined that the benefit of the combined public and private development could not be achieved by private enterprise alone without the aid provided by Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended;

WHEREAS, Alstores Realty Corporation has constructed and reconstructed certain buildings, all of which together comprise the department store operated under the name of Jordan Marsh and all of which are to be physically and operationally integrated with the Project;

WHEREAS, the Developer and the City have entered into this Agreement and other documents providing for such integration of the Project and such department store; and

WHEREAS, the City, the Authority and Developer are entering into this Agreement in reliance upon the performance of their various obligations hereunder and the construction by each of them of certain improvements as a part of and incident to the Project,

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement:

Section 1.01. Air Rights. The term Air Rights shall mean the entire parcel of real estate comprising the air space over the several planes forming the uppermost part of the roof of the Parking Garage and, as appurtenant thereto, the following rights and easements which the City has determined are necessary and appropriate to ensure the commercial viability of the Air Rights:

(a) Exclusive fee simple absolute rights in certain volumes of space and the inner face of the walls enclosing such volumes within the Parking Garage;

(b) Rights and easements to be exercised in common with the City and others from time to time entitled thereto in volumes of space and areas within, under or contiguous to the Parking Garage to the extent the same are necessary or appropriate for all matters related to the use, maintenance and operation of the Project including, without limitation, that reasonably necessary for support, mechanical storage, loading, ingress, egress, encroachments and utility easements; and

(c) Rights and easements in the Truck Ramp, the Passageway and subsurface rights acquired by the City under the Sale and Construction Agreement, such rights and easements to be conveyed upon terms consistent with the provisions relative thereto set forth in the Maintenance and Easement Agreement.

There shall be excepted and reserved from the Air Rights public rights and easements in the plaza, malls and circulation system referred to in Section 5.07 hereof upon terms consistent with the provisions relative thereto set forth in this Agreement. The Developer shall have the right from time to time to place and thereafter control the use of structures within the areas subject to such malls and circulation system, provided that such structures do not unreasonably interfere with public use of the malls and circulation system.

Section 1.02. Air Rights Deed and Agreement. The term Air Rights Deed and Agreement shall mean a quitclaim deed and agreement pursuant to which the City shall convey the Air Rights to the Developer and shall set forth other agreements between the Developer and the City pursuant to the provisions of this Agreement.

Section 1.03. Alstores Realty Corporation. The term Alstores Realty Corporation shall mean, any or all, as appropriate to the context, of Alstores Realty Corporation, a Delaware corporation, and its affiliates, including Al-Jordan Realty Corp. and Jordan Marsh Company (Boston), a Massachusetts corporation.

Section 1.04. City-BRA Agreement. The term City-BRA

Agreement shall mean the agreement described in Section 2.01(b) hereof.

Section 1.05. Chapter 121A. The term Chapter 121A shall mean Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended.

Section 1.06. Closing Date. The term Closing Date shall have the meaning ascribed to it in Section 3.02 hereof.

Section 1.07. Code. The term Code shall mean the Boston Zoning Code, as amended.

Section 1.08. Design Review Process. The term Design Review Process shall mean the review process described in Section 4.03 hereof.

Section 1.09. Development Program. The term Development Program shall mean the preliminary schematic design and development program for the Project, more particularly described in Section 4.01 hereof.

Section 1.10. Hayward Place Garage. The term Hayward Place Garage shall mean the existing parking facility located on Parcel D-3.

Section 1.11. Institutional Lender. The term Institutional Lender shall mean a commercial bank, trust company, mutual savings bank, savings and loan association, life insurance company, pension trust fund, mortgage or real estate investment trust having a minimum capital and surplus of five million dollars ($5,000,000).

Section 1.12. Jordan Marsh Facility. The term Jordan Marsh Facility shall mean the department store commonly known as Jordan Marsh located at the corner of Washington and Summer Streets in the City adjacent to the Project Area.

Section 1.13. Maintenance and Easement Agreement. The term Maintenance and Easement Agreement shall mean the maintenance and easement agreement to be executed pursuant to the Sale and Construction Agreement by and among Alstores Realty Corporation, the Developer and the City.

Section 1.14. Master Schedule. The term Master Schedule shall mean the schedule first referred to in Section 3.01 hereof.

Section 1.15. Mortgagee. The term Mortgagee shall mean one or more Institutional Lenders to which Developer has granted a mortgage or mortgages covering all or any part of the Project Area or rights therein, or any other party or parties to which one or more such mortgages have been granted in accordance with the terms of this Agreement.

Section 1.16. Parking Garage. The term Parking Garage shall mean the public parking garage to be constructed and operated by the City pursuant to and more particularly described in Article V hereof.

Section 1.17. Passageway. The term Passageway shall have the meaning ascribed to it in the Maintenance and Easement Agreement.

Section 1.18. Plan. The term Plan shall mean the Bedford West Urban Renewal Plan.

Section 1.19. Project. The term Project shall mean the proposed development sometimes known as Lafayette Place and comprising a multi-use development providing for various retail, commercial, office, hotel and recreational uses, as more particularly described in the Development Program.

Section 1.20. Project Area. The term Project Area shall mean the area shown on Exhibit A including the several parcels of land shown thereon as Parcels A, B, C, D-1, D-2, D-3, D-4 and E and portions of certain streets to be discontinued within certain limits.

Section 1.21. Project Rights. The term Project Rights shall mean the Developer's present and future rights in and to the Project Area (including any improvements therein) and the Developer's present and future rights, directly or by assignment, under this Agreement, the Air Rights Deed and Agreement and any further instrument executed in pursuance

of the Project as contemplated by this Agreement.

Section 1.22. Public Improvements. The term Public Improvements shall mean all public improvements to be constructed by the Authority, the City or the Developer in accordance with Article V hereof.

Section 1.23. Public Utilities. The term Public Utilities shall mean water, sewer and storm drainage systems.

Section 1.24. Sale and Construction Agreement. The term Sale and Construction Agreement shall mean the Agreement described in Section 2.01(a) hereof.

Section 1.25. Substantial Completion. Substantial Completion shall mean that the architects responsible for supervising construction have certified to the City and the Developer that:

(a) With reference to the Parking Garage, physical construction of the Parking Garage and all facilities related thereto or forming a part thereof has reached such point as to enable the Developer to commence construction of the Project as if it were to occur on a fully-prepared site consisting of raw ground and to enable the Developer to use the portions thereof lying below the several planes forming the uppermost part of the roof of the Parking Garage for the purposes for which they were designed. Without limiting the foregoing, in no event shall Substantial Completion be considered as occurring until the Parking Garage has been adequately waterproofed throughout (including the roof, except where the design of the Project shall permit waterproofing to be eliminated) and the roof has been entirely prepared with a steel trowel finish; and

(b) With reference to all Public Improvements except the Parking Garage, physical construction thereof and all facilities related thereto or forming a part thereof has reached such point as to enable commencement of the use for which they were designed, subject only to completion of such additional work as does not materially interfere with such use.

Section 1.26. Truck Ramp. The term Truck Ramp shall have the meaning ascribed to it in the Maintenance and Easement Agreement.

ARTICLE II

LAND ASSEMBLY

Section 2.01. Land Acquisition. The City will acquire

certain of the land and improvements thereon within the Project Area upon the terms and conditions hereinafter set forth:

(a) Parcels A and B and certain rights appurtenant thereto will be acquired by the City from Alstores Realty Corporation and others in accordance with the terms of the Sale and Construction agreement, which was duly executed by the parties concurrently with the execution hereof. The City agrees promptly to perform its obligations under the Sale and Construction Agreement and not to amend it without the consent of Developer.

(b) Parcel C and Parcel D-4 will be acquired by the City from the Authority. Such acquisition will be pursuant to the City-BRA Agreement to be entered into between the City and the Authority not later than thirty (30) days after the Boston City Council shall approve this Agreement. The City-BRA Agreement shall be on terms wholly consistent with this Agreement. A fully-executed and binding copy of the City-BRA Agreement shall be delivered to the Developer forthwith after its execution. The City agrees promptly to perform its obligations under the City-BRA Agreement and not to amend it without the consent of Developer.

(c) Parcels D-1 and D-2 are presently owned by Code Realty, Inc. and will be acquired by City by agreement to be entered into between Code Realty, Inc. and the City not later than thirty (30) days after the Boston City Council shall approve this Agreement. Such agreement shall be on terms wholly consistent with this Agreement. A fully-executed and binding copy of such agreement shall be delivered to the Developer forthwith after its execution. In all events, the City shall acquire Parcels D-1 and D-2 at least five (5) days prior to the Closing Date using the power of eminent domain, if necessary. The City agrees promptly to perform its obligations under its agreement with Code Realty, Inc. and not to amend it without the consent of Developer.

(d) Parcel D-3 is presently owned by the City and the Hayward Place Garage located thereon is presently leased, by lease dated August 29, 1956, to Code Realty, Inc. Not later than five (5) days prior to the Closing Date the City shall terminate such lease and acquire unencumbered fee title to Parcel D-3 and the Hayward Place Garage.

(e) The City agrees to use all best and diligent efforts to cause those portions of Avon Street, Bedford Street, Exeter Place, Harrison Avenue Extension, Norfolk Place and Chickering Place lying within the Project Area to be discontinued as public ways and acquired in fee simple absolute by the City not later than thirty (30) days prior to

the Closing Date, except that, as to Bedford Street, discontinuance may be conditional so as to become effective not later than the date on which the Public Improvement consisting of Stage I of New Essex Street referred to in Section 5.04 c) hereof shall first be available for public use.

ARTICLE III

PRE-CLOSING ACTIVITIES; CLOSING DATE; AIR RIGHTS DISPOSITION

Section 3.01. Pre-closing Activities. Forthwith after the execution of this Agreement the City and the Developer shall continue diligently to pursue, in coordination with each other, design of the Parking Garage and the Project in accordance with the criteria relative thereto set forth in this Agreement. Such design work and all other pre-closing matters shall be accomplished in accordance with the Master Schedule annexed hereto as Exhibit C.

Section 3.02. Closing Date. The Closing Date shall be the tenth (10th) business day after the City and the Developer have acknowledged that the conditions set forth in Section 3.03 to be satisfied by each have been satisfied or the City and the Developer shall have determined that such conditions will be satisfied by the Closing Date. Upon request of either after it believes it has satisfied any condition, the City or the Developer, as the case may be, shall acknowledge that such condition has been satisfied (or state in reasonable detail why performance is unacceptable), provided that the party for whose benefit any condition is to be satisfied may, in writing, waive satisfaction of such condition. The City, the Authority and the Developer each agree to exercise best and diligent efforts to satisfy their respective conditions set forth below. It is agreed that the failure of any party to satisfy any condition shall not constitute an event of default hereunder unless such party shall have failed to exercise best and diligent efforts to perform the same.

Section 3.03. Conditions.

(a) The Developer shall satisfy the following conditions for the benefit of the City:

(i) Developer shall have made the following payments, which shall be reflected as the consideration in the Air Rights Deed and Agreement:

(x) One Million Six Hundred Fifty Thousand and 00/100 Dollars ($1,650,000.00) shall have been paid by the Developer for the benefit and account of the City under the Sale and Construction Agreement, the City hereby acknowledging that such amount has been so paid by the Developer prior to the execution of this Agreement;

(y) Two Million and 00/100 Dollars ($2,000,000.00) shall have been paid by the Developer for the benefit and account of the City by the delivery of notes and security therefor as required by the Sale and Construction Agreement;

(ii) Drawings and specifications for the Project shall have reached such stage of preparation as to enable condition 3.03(b)(v), below, to be satisfied and the determination required by Section 3.03 (a)(iii), below, to be made and, as so prepared, shall have been approved by the Authority in accordance with Section 4.03 hereof;

(iii) Developer shall have furnished to the Authority evidence of the issuance by an Insitutional Lender or others specifically approved by the Authority of one or more commitments for permanent mortgage financing for the Project in amounts which, together with other funds available to Developer, shall be reasonably determined by the Authority as sufficient to enable construction of the Project to be completed to such an extent that it shall contain up to 300,000 gross square feet of retail/commercial space and a hotel containing up to 500 rooms. Consistent with the requirements of law applicable thereto and in recognition of the need of the Developer to insure the privacy of its financial arrangements, the Authority agrees that all such evidence delivered to it by or on behalf of Developer hereunder and all meetings and discussions concerning the contents thereof shall be held in the strictest confidence and not made the subject of any public disclosures, without the express prior written consent of Developer;

(iv) Developer, City and Alstores Realty Corporation shall have entered into the Maintenance and Easement Agreement.

(b) The City and the Authority, as appropriate, shall satisfy the following conditions for the benefit of the Developer:

(i) The City and the Authority shall have performed or be ready, willing and able to perform their obligations under the Sale and Construction Agreement to the extent performance is required or necessary to permit a closing hereunder.

(ii) City shall have taken all actions required to enable it to deliver title to the Air Rights pursuant to this Agreement. Accordingly, at least five (5) days prior to the Closing Date the City shall have caused to be delivered to Developer, at Developer's sole cost and expense, an owner's title insurance policy or commitment therefor (current ALTA form) from a nationally recognized title insurance company acceptable to Developer insuring or committing to insure fee simple absolute title to the Air Rights without exception for any matters other than those expressly set forth in Section 1.01 hereof. In connection therewith:

1) Within forty-five (45) days after the City Council shall have approved this Agreement, the Developer shall at its expense cause to be delivered to the City a statement as to the status of title as of the date of such approval to Parcels A, B, C, D-1, D-2, D-3 and D-4, and

2) Prior to any conveyance of the Air Rights the City shall make such confirmatory takings as are necessary, in the reasonable opinion of counsel to the Developer, to enable it to deliver title of the quality called for by this Agreement.

(iii) City shall have made the acquisitions and caused the discontinuances of public ways required under Section 2.01(e) hereof.

(iv) City shall have caused demolition of the existing structures (the Annex, so-called) on Parcel A to be proceeding in accordance with the Master Schedule.

(v) City and the Authority shall have caused all necessary approvals, funding orders and permits to have been given and shall have executed all design, construction and materials contracts and subcontracts as may be appropriate such that all work (including excavation) is then proceeding on the Public Improvements in accordance with the Master Schedule;

(vi) City and the Authority shall have submitted to Developer, evidence satisfactory to Developer indicating that work on

the Public Improvements shall continue to be undertaken and completed in accordance with the Master Schedule.

(vii) City, Developer and Alstores Realty Corporation shall have entered into the Maintenance and Easement Agreement and Alstores Realty Corporation shall have executed and delivered for recording the operating covenant annexed as Exhibit F to the Sale and Construction Agreement.

(viii) The Authority shall have submitted to Developer such final and binding agreements, funding orders and authorizations as shall be needed in order to establish that the subway kiosk on Summer Street referred to in Section 5.04 d) hereof will be completed in accordance with the Master Schedule.

Section 3.04. Air Rights Disposition. On the Closing Date and if the conditions set forth above have been satisfied or waived by the City and the Developer, the City shall convey to the Developer and the Developer shall purchase from the City fee simple absolute title to the Air Rights, such sale and purchase to be accomplished by City and Developer mutually signing, sealing and delivering the Air Rights Deed and Agreement. Because the Project and the Parking Garage and certain other Public improvements will necessarily be physically and functionally related the parties recognize that the Air Rights Deed and Agreement will have to set forth mutual rights and obligations with respect to matters of common concern. Accordingly, the parties shall cooperate with each other to insure that the terms and provisions of the Air Rights Deed and Agreement are consistent with the spirit and provisions of this Agreement. Without limiting the foregoing, the Air Rights Deed and Agreement shall provide that the Air Rights shall automatically, and without the need for execution of further documents, revert to the City after ninety-nine (99) years from the date of recordation thereof.

The Air Rights Deed and Agreement shall independently obligate the Developer to make a non-cumulative annual payment to the City in an amount equal to twenty-five percent (25%) of the net profits from the Project but in no event to

exceed One Hundred Fifty Thousand Dollars ($150,000). Net profits shall be determined in conformity with accounting principles for the Project established under Chapter 121A.

In recognition of the fact that the economic viability of the Project depends upon its direct access to the Parking Garage and the lack of such access by any other present or future private development, the Air Rights Deed and Agreement shall expressly prohibit direct access by any other present or future private development except where consent thereto is given by both the City and the Developer. The City shall not give such consent if the Developer shall object thereto, the City agreeing that such objection may, without limitation, be based upon a determination by Developer that the economic viability of the Project may be adversely affected.

ARTICLE IV

DEVELOPER'S IMPROVEMENTS

Section 4.01. Development Program. The City and the Authority acknowledge receipt of and hereby approve the Development Program for the Project, which is annexed hereto as Exhibit D. The City and the Authority recognize that in undertaking the Development Program the Developer will be proceeding in reliance upon faithful and prompt performance by the City and the Authority of other obligations with respect to the Public Improvements in accordance with Article V hereof.

Section 4.02. Works of Art. As part of the Project the Developer shall cause to be constructed works of art, the costs attributable to which shall not be less than Seventy-five Thousand Dollars ($75,000). The artists, works of art and their location proposed by the Developer shall be subject to the prior approval of the Authority. Works of art may consist of, but not be limited to, individual items such as sculptures, paintings, mobiles, fountains or the like and decorative features and finishes forming a part of the Project adjacent to or visible from public areas within the

Project Area. For these purposes, costs of the works of art shall include payment made to any artist, designer or architect on account thereof as well as costs of labor and materials incurred in connection with installation thereof.

Section 4.03. Design Review Process. So long as this Agreement has not been terminated by reason of an event of default in accordance with Article XI or pursuant to Article XII, construction of improvements in the Project Area shall proceed in accordance with the Development Program and plans and specifications that have been processed and approved pursuant to the Design Review Process of the Authority, the procedures of which are set forth in Exhibit E annexed hereto. The Design Review Process shall be supplemented by the following:

(a) All submissions shall reflect refinements or modifications of the Development Program.

(b) All submissions shall be made by Developer to the Director of the Authority, or his successor, and receipts for such submissions and notices shall be obtained from or on behalf of such Director, the Authority hereby agreeing to cause such receipts to be given upon request therefor. The Developer may rely upon any communication received from the Authority as being duly approved and executed on behalf of the Authority as long as the same is signed by the Director of the Authority, or his successor.

In all notices given by Developer in accordance with the provisions of this Section 4.03, there shall be set forth a statement in the following words or in different words which clearly convey the same meaning:

> "This notice is being submitted pursuant to Section 4.03 of an Agreement between the City of Boston, the Boston Redevelopment Authority and Lafayette Place Associates and concerns the development known as Lafayette Place. Failure to respond to this notice within a certain time may result in automatic approvals of the matters set forth or referred to in this notice."

The Developer shall endeavor to cause such words to be set off in such manner as will direct attention to them (such as by italics or solid capital lettering), but the failure to do so shall not negate the effect of any notice.

(c) Not later than twenty-one (21) calendar days after submission by the Developer of any materials which require approval in accordance with the Design Review Process, the Authority shall either approve such materials or notify the Developer of the specific respects in which it finds such materials to be unacceptable. If the Authority does not notify the Developer within said twenty-one (21) day period after submission of such materials of specific respects in which the same is unacceptable, such materials shall be treated as having been approved by the Authority. In respect to any specific matters of which the Authority disapproves, the Developer shall, within twenty-one (21) calendar days (or such additional time as may be requested by Developer and reasonably approved by the Authority) after the Developer receives written notice of such disapproval, resubmit appropriate material, altered in an effort to remove the basis for disapproval. All resubmissions and subsequent approvals or disapprovals thereof shall be made and given in accordance with the procedure hereinabove provided for the original submission, until the relevant materials shall be approved or shall be treated as having been approved by the Authority as set forth above or until there has been an event of default pursuant to Article XI hereof. In reviewing submissions made to it, the Authority shall be bound by the terms of prior approvals so long as the submission under review reflects a refinement or modification of the Development Program.

(d) In connection with the foregoing, the parties contemplate that submission and review of design material will be a continuous process, with the parties working cooperatively and expeditously with respect to Project design matters.

(e) Copies of all submissions of a significant nature related to the construction or operation of the Parking Garage shall be delivered by Developer to the Commissioner of the Real Property Board at or about the same time that delivery of the same is made to the Director of the Authority.

Section 4.04. Development. Developer shall commence construction of the Project not later than ninety (90) days after Substantial Completion of the Parking Garage by the City. The Developer shall, if conditions permit, be entitled to commence construction of the Project prior to such Substantial Completion and the City shall recognize such right of the Developer in its construction contracts, which shall call for the City and the contractor thereunder to

take actions which will encourage and permit early commencement of construction by the Developer and shall obligate such parties to work harmoniously with the Developer.

Section 4.05. Diligent Prosecution. The Developer shall continue with design work on the Project and shall, subject to Section 4.04, commence construction of the Project in accordance with the Master Schedule. All construction by the Developer shall be undertaken in a good and workmanlike manner. The Developer shall keep the Authority and the City advised of matters under control of the Developer which may affect the timing of performance of their obligations hereunder.

Section 4.06. Certificate(s) of Completion. Promptly upon substantial completion of the Project substantially in accordance with approved working drawings and specifications, the Authority will furnish the Developer with an instrument certifying such fact. If the Developer shall request, the Authority shall issue separate instruments certifying to the substantial completion of the portion of the Project developed for hotel and related purposes and the portion of the Project developed for retail/commercial purposes independent of the hotel. Each such instrument shall be in recordable form and shall be a conclusive determination of satisfaction of all agreements herein contained on the part of the Developer relative to construction of the Project.

If the Authority shall refuse or fail to issue one or more such instruments in accordance with the provisions of this Section 4.06, the Authority shall, within twenty-one (21) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respect the Developer has failed substantially to complete the Project in accordance with the provisions of this Agreement, and what measures or actions will be necessary, in the reasonable opinion of Authority,

for the Developer to take or perform in order to obtain such an instrument. If the Authority shall refuse or fail to provide the Developer with such a written statement within twenty-one (21) days of a request therefor by the Developer, the instrument certifying substantial completion of the Project (or the portion thereof for which such instrument has been requested) shall be deemed to have been issued and the Developer shall, without limiting other rights then available to it, be entitled to seek speedy judicial relief ordering such instrument to issue, the Authority hereby agreeing to take actions consistent with enabling the Developer to obtain such speedy judicial relief.

Section 4.07. Local Employment. In connection with the development of the Project, Developer will proceed in good faith as to matters reasonably within its control to encourage the employment, in various construction subtrades, by contractors hired by the Developer, of Boston residents during the construction period. Consistent with this undertaking and subject in all respects to federal and state non-discrimination laws and "Affirmative Action" regulations and plans, Developer will request that such contractors notify the City of Boston Employment and Economic Policy Administration, five (5) days in advance of any public advertisement and ten (10) days in advance of any proposed hiring date (five days for construction jobs), of the existence of job opportunities which it intends to establish at the Project, stating its desire to be referred Boston residents, and will work diligently and in good faith with such Agency to provide the maximum reasonably possible number of such subtrade jobs for qualified local residents. Developer will further request such contractors to maintain records reasonably necessary to ascertain compliance with the above will be for at least one (1) year after any given action, and to make the same available to City or Authority officials for inspection upon reasonable notice.

Section 4.08. Staging Area. At all times during construction of the Project, the City will make available to the Developer, at the then prevailing rates charged by the Authority for use of its land for similar purposes, Parcels D-1, D-2 and D-4 and discontinued streets adjacent thereto as a staging area on which the Developer shall be entitled to store equipment and materials. The use of this staging area by the Developer shall be exercised in common with the City or the Authority which reserve the right to use such area for similar purposes with respect to construction of the Public Improvements. In the event of non-exclusive use the charges to be paid by the Developer shall be appropriately prorated. The parties using this staging area shall take all precautions required by law with respect to such use.

ARTICLE V

PUBLIC IMPROVEMENTS

Section 5.01. Program for Public Improvements. Forthwith after the execution of this Agreement, the City and the Authority hereby agree to undertake the program for Public Improvements set forth in this Article V in conformity with the Master Schedule. Adherence to the Master Schedule is necessary because of the physical integration of the Project, the plaza, malls and circulation system referred to in Section 5.07 hereof with the major portions of the Public Improvements (for example, the Project cannot commence until there has been Substantial Completion of the Parking Garage) and the related dependence of the Developer's financing and other commitments. The City and the Authority have determined that substantial public benefits will flow from the successful integration of the public and private improvements described in this Agreement.

The City and the Authority shall at all times keep the Developer currently advised of the status of all aspects of the design and construction work for Public Improvements.

The Developer recognizes that in undertaking the Public Improvements the City and the Authority will be proceeding in reliance, in part, upon faithful and prompt performance by the Developer of its obligations hereunder.

The City and the Authority shall notify the Developer of architectural, project management, special consultant and other contracts proposed to be entered into relative to the Public Improvements and proposed amendments to such contracts so that the Developer may review and comment on them before they are executed on behalf of the Authority or the City, it being agreed that although the City and the Authority reserve the ultimate power to make such commitment, the City and the Authority shall make best efforts to restructure such proposed contracts if the Developer shall reasonably object to any of the provisions thereof as being incompatible with the integrated nature of the Project and the Public Improvements. The Developer shall notify the City or the Authority of any objections within fifteen (15) working days after it has received notice of such proposed contracts, together with copies of the same. All such contracts shall obligate the parties to act in a manner consistent with the obligations of the City and the Authority under this Agreement. During the implementation of any such contracts the Developer shall have the right to review and comment upon all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the integration of the Project and the Public Improvements. If the Developer shall notify the City or the Authority that such work is not so consistent then, unless they disagree with the Developer, the City or the Authority shall promptly cause such work to be corrected. If the City or the Authority shall disagree with the Developer then the parties shall work cooperatively together to resolve their differences in harmony with the intent of this Agreement.

Where public bidding is required, the preparation and content of bid packages and the solicitation of bids shall be subject to prior review and approval by the Developer, the Developer hereby agreeing to make such review and notify the City of any objections Developer may have within fifteen (15) working days after the Developer has received notice of bid packages together with copies of the same. Except as the same may be necessary to cause compliance with any legal requirement, no change orders to any contracts entered into as the result of such public bidding which would affect the Project improvements shall be made without the prior approval of the Developer if such change orders would, in the reasonable opinion of the Developer, result in a delay in the completion of the Public Improvements or adversely affect their integration with the Project. The Developer shall in no event have any approval rights with respect to the identity of the persons contracting with the City and the Authority as described in this Section 5.01, but the City and the Authority shall seek persons with proven capability for construction not dissimilar in scope to the Project and Public Improvements.

Section 5.02. Environmental Approvals. The City and the Authority shall at their sole cost and expense undertake promptly and diligently pursue all environmental studies, reports and evaluations required by Federal, state or local law or regulation in order to permit the public and private development programs contemplated by this Agreement to proceed promptly. The City and the Authority shall keep the Developer advised of all matters with respect to environmental approvals and shall forward to the Developer copies of all such studies, reports and evaluations. The Developer and any consultants engaged by Developer shall have the right to review and comment upon them and the City and the Authority shall make appropriate changes to reflect such comment before they shall be made final or filed with any

public authority.

Section 5.03. Cost of Parking Garage. Not later than December 15,1978,the City shall cause to be made an itemized construction budget for the Parking Garage. Copies of such budget shall promptly be made available to the Developer. If the total cost of design and construction of the Parking Garage as shown in such budget shall not exceed the Parking Garage Budget (as hereafter defined), the City shall, following the closing hereunder, be obligated to complete the Parking Garage no matter what its ultimate cost may be. If the total cost of the Parking Garage as shown on such budgets shall exceed the Parking Garage Budget, the City shall exercise all best and diligent efforts to redesign the Parking Garage and take such other actions as may appear reasonable to ensure that the Parking Garage may be built within the Parking Garage Budget. If, having made such efforts, the Parking Garage still cannot be built within the Parking Garage Budget then the City shall be obligated to proceed with its obligations under this Agreement (including the completion of the Parking Garage) unless it shall, within sixty (60) days after completion of such efforts and receipt of a revised budget, notify the Developer of its intent to terminate this Agreement. Upon receipt of such notice, the Developer shall have sixty (60) days to develop, with the City, alternative design and financing solutions. If the City and the Developer fail to reach agreement on an alternative approach within such sixty (60) day period, all rights and obligations of the parties hereunder, except those set forth in Section 12.02 hereof, shall cease and this Agreement shall terminate. No event of default shall be claimed against the City if the Parking Garage Budget is exceeded unless the City shall have failed to exercise all best and diligent efforts, consistent with the foregoing, to eliminate such excess.

Section 5.04. Design of Certain Public Improvements.

Consistent with the foregoing, the City and the Authority shall cause all Public Improvements to be designed so as to be compatible with the design and use of the Project and, in all events, consistent with the design criteria hereinafter set forth. All design work shall be undertaken in conformity with the Master Schedule.

a) Parking Garage. The City and the Authority have determined that the quality of the design of the Parking Garage and its compatibility and coordination with the design, function and construction of the Project are essential as matters that will be of mutual benefit to the Developer, the City and the Authority. The City has also determined that the space above, within or contiguous to the Parking Garage which is to be conveyed (either for exclusive ownership or use in common with others) to the Developer as provided in this Agreement is unnecessary or inappropriate for parking purposes, provided, that, such non-parking use does not interfere with the proper functioning of the Parking Garage as it may be expanded. The City has also determined that the Project will contribute to the maximum use of the Parking Garage. Accordingly:

(i) The Parking Garage shall be a parking facility capable of accommodating at least nine hundred (900) standard sized automobiles in three subterranean parking levels. It shall be constructed initially to the southerly line of the right of way of New Essex Street (see below) along as much as practicable its entire length bordering Parcel C, Harrison Avenue Extension, as discontinued, and Parcel B and shall be designed for expansion potential at least beneath Parcels D-1, D-2, D-3 and D-4.

(ii) Consistent with providing access to and use of the Parking Garage and the disposition of surplus space above, within or contiguous thereto, and with supporting the Project and securing public benefits the Parking Garage shall have (i) suitable pedestrian ingress and egress, including vertical escalated access between the Parking Garage and the plaza and malls and the Project hotel and between the plaza (and the Project hotel) and New Essex Street; (ii) space for retail

facilities on Chauncy and New Essex Street; and (iii) areas to be used for structural support, mechanical and electrical services, storage and other features and services reasonably supportive of the Project.

b) Hayward Place Garage Renovation. Except as provided in Article VI and without diminishing the design standards for the Parking Garage in Section 5.04 a), the City shall cause to be undertaken renovations to the Hayward Place Garage so as to create facilities for the parking of a combined total of 1500 automobiles in the Hayward Place Garage and the Parking Garage. Consistent with Chapter 456 of the Acts of 1974 and with Article VI hereof, the renovations to the Hayward Place Garage shall be temporary in nature, designed to accommodate the need for parking for 1500 cars in the Project Area and with the intent that replacement subsurface parking shall be provided at least on Parcels D-1, D-2, D-3 and D-4.

c) Street Improvements. The Authority shall cause the construction and dedication of a new public way known as New Essex Street and certain betterments to Bedford Street and Chauncy Street. The layout for New Essex Street and betterments to Chauncy Street shall substantially conform to the plan attached hereto as Exhibit F and both the layout for New Essex Street and the betterments to Bedford Street shall meet the standards attached hereto as Exhibit G.

d) Subway Kiosk on Summer Street. The Authority shall exercise all best and diligent efforts to cause an entrance to the Massachusetts Bay Transportation Authority subway system to be created so as to provide direct and continuous access to such subway system from Summer Street at the Passageway. The design of such entrance shall insure that it is compatible in appearance and function with the public pedestrian improvements to be constructed in accordance with this Agreement. Forthwith after the execution of this Agreement, the Authority will enter into all required

agreements with the MBTA which are necessary in order to permit the Authority to fulfill its obligations hereunder. If permitted by law, the Authority shall fund such entrance if funding is not available from any other source.

e) Other Public Project Area Improvements. In addition to the foregoing, the Authority shall cause public betterments and improvements to be made within the Project Area. These shall include sidewalk paving, curbs, street paving, public lighting, traffic signals, surface drainage as needed, landscaping and street furniture. The highest standards of design and materials shall be used for those betterments and improvements so that they shall be consistent in appearance with the other Public Improvements.

Section 5.05. Construction. The City and the Authority shall cause all construction of the Public Improvements to be undertaken in a good and workmanlike manner using materials of a first class quality. All construction shall be undertaken in conformity with the Master Schedule. Without limitation and in recognition and emphasis of the critical importance to the Developer of the Substantial Completion of the Parking Garage it is agreed that, as required by the Master Schedule, construction of the Parking Garage shall commence by April 1, 1979 and Substantial Completion shall be achieved not later than July 1, 1980.

In order to provide maximum assurance to the Developer and to the City and the Authority that the Parking Garage is being constructed in a timely fashion in accordance with the requirements of this Agreement, the City agrees to engage a construction manager to oversee implementation of the City's obligations hereunder to design and build the Parking Garage. The construction manager shall be a firm (local,if possible) of the highest reputation with a demonstrated capability in constructing developments (or, if no such contractor can be found, in designing developments) having a

scale, complexity and mixed-use orientation comparable to the Project. The terms of such engagement shall conform generally to the provisions set forth in Exhibit H attached hereto. The City and the construction manager shall cause copies of all progress reports and other materials forthwith to be made available to the Developer.

During all aspects of construction of the Project, the City and the Authority will make available Public Utilities consistent with the reasonable needs of Developer and the Developer shall pay for all consumption of Public Utilities in accordance with customary rates and practices of the City.

Subject to applicable requirements of law, the City will obtain payment and performance bonds from the contractor hired to build the Parking Garage and other Public Improvements. To the maximum extent permitted by law, the Developer shall be named as an obligee under such bond relating to the Parking Garage, but without incurring any obligations on account thereof. Further, the City shall cause all construction contracts for Public Improvements to contain a per diem penalty payable to the City for each day beyond the date set forth in the Master Schedule for completion of the Public Improvements, the amount thereof to be sufficient reasonably to insure adherance to the Master Schedule.

Section 5.06. Operation and Maintenance of Parking Garage and Hayward Place Garage. To assure that the public benefits are maximized, the City shall continuously cause to be maintained and operated the Parking Garage and the Hayward Place Garage (until, as to the Hayward Place Garage, the Hayward Place Garage is demolished as permitted by the terms of this Agreement) in a manner that will promote full use of both facilities and which will be supportive of the Project, and in accordance with the following standards:

(i) Operation and maintenance shall be undertaken by professional managers experienced in similar facilities. Such operation and maintenance shall be undertaken in a manner at least equal to the operation and maintenance of similar, first-class, facilities in prime retail and commercial locations in cities elsewhere in the United States at least equal in size to the City.

(ii) Any bid packages prepared by the City for the operation and maintenance of the Parking Garage and the Hayward Place Garage shall be submitted to the Developer prior to advertisement for its review and comment, the City agreeing to consider reasonably any comments the Developer may have. Such bid packages and any final operating agreement shall in all events be consistent with the standards set forth in this Section 5.06.

(iii) Subject to the following terms, up to fifteen percent (15%) of the total number of parking spaces ultimately provided within the Project Area in accordance with this Agreement, but in no event less than two hundred and twenty-five (225) spaces, shall be reserved in the Parking Garage and made available on a first come/first served/in-and-out basis for the exclusive use of transient occupants of any hotel constructed pursuant to the requirements of this Agreement. Such two hundred and twenty-five (225) spaces shall be so reserved at all times and shall be paid for as required hereby except that if the operator of such hotel shall notify the City, at least ten (10) days before the end of any calendar quarter, that less than two hundred and twenty-five (225) spaces is to be reserved then payment hereunder shall only be for the desired amount of spaces specified in such notice. Payment for such spaces shall be made at a daily rate not to exceed 5% of the average daily non-discounted room rate for such hotel determined on an annual basis, except that such room rate for these purposes shall never be less than sixty (60) dollars. Payment for spaces reserved hereunder shall be made monthly, in arrears. The average daily non-discounted room rate shall be determined based upon a certified statement with respect to such hotel presented to the City as promptly as possible after the end of each calendar year, and the figures shown on such statement shall be used as the basis for the rates to be charged for the next calendar year and as the basis for making a final adjustment with respect to any increases in room rates occurring during the calendar year for which the statement has been prepared.

If such operator shall desire spaces in excess of two hundred and twenty-five (225) to be so reserved and made available and shall notify the City thereof not more frequently than quarterly then such excess spaces may be set aside pursuant to appropriate arrangements to be agreed upon.

The two hundred and twenty-five (225) spaces (or less, if notice is given as herein required) to be reserved and made available hereunder shall be located adjacent to the drop-off lobby for such hotel and any spaces in excess of such number shall, if at all possible and physically feasible, be similarly located.

(iv) In order to encourage all-hour use of the downtown business district, the Parking Garage shall be open to the public twenty-four (24) hours a day, seven (7) days a week. In addition, the Hayward Place Garage shall be open to the public during normal business hours of tenants of the Project (except any hotel) and such other hours as shall be required in order to meet the parking needs of the Project and the downtown business district. Except as above provided, the Parking Garage and the Hayward Place Garage facility shall be governed by a parking rate structure which incorporates the most responsible approach in the industry designed to encourage full occupancy for shoppers' (i.e., short duration) parking. No such parking rate structure shall be established unless the same is first submitted to the Developer for its review and comment, the City hereby agreeing to exercise best efforts to incorporate any reasonable comments made by the Developer.

(v) If at any time the City shall determine that there is surplus space in the Parking Garage because the same is no longer necessary for parking purposes or for some other reason the Developer shall have the first right to purchase or lease such space on such terms as the City may propose.

Section 5.07. Plaza, Malls and Circulation System. The Developer shall cause to be designed and constructed a plaza and malls and circulation system above the Parking Garage. The plaza shall be built on the roof of the Parking Garage and shall serve as a public open space and as the focal point for pedestrian circulation on this level. The plaza, together with the malls and circulation system, shall serve as a means of access to and egress from the Parking Garage. The appearance of the plaza will provide an attractive environment for pedestrians of a quality and with materials at least equal to those in the Faneuil Hall-Quincy Market area of Boston. Appropriate support features, such as benches and lighting, shall be provided to the same standards. The malls and circulation system shall be located on

the same level as the plaza and the next level above. They shall support pedestrian circulation, including vertical access between the levels, and pedestrian access to the Parking Garage. The malls and circulation system shall be completely enclosed and provided with a separate, self-supporting heating, ventilating and air-conditioning system. Structural support for the second level shall be provided. The malls and circulation system shall have adequate capability to handle present and future volumes of pedestrian traffic and shall be designed to the same quality standards as the surrounding Project environment as described above. The plaza, malls and circulation system shall be coordinated in design and function with the Passageway to be constructed through the abutting property to the north to Summer Street, and with the points of egress and ingress to Washington Street and New Essex Street. Such improvements have been determined to be necessary to and supportive of the Project. The City or the Authority, as the case may be, shall pay to the Developer the Plaza, Malls and Circulation System Budget (as hereafter defined). Such amount may be reduced by the cost of materials used in connection with construction of the plaza, malls and circulation system if the City or the Authority shall obtain the same by public bid and make them available to the Developer (together with all guarantees and the like relating thereto) for installation. Payment shall be made by the City or the Authority, monthly, for work in place as work progresses in accordance with plans previously submitted to the City and the Authority. The Developer shall submit monthly requisitions to the City and the Authority clearly showing the matters on account of which payment is requested.

Section 5.08. Parking Garage Budget; Plaza, Malls and Circulation System Budget. As used herein, the Parking Garage Budget (exclusive of land acquisition costs) is Thirteen Million Five Hundred Thousand Dollars ($13,500,000.00)

and the Plaza, Malls and Circulation Budget is Four Million Dollars ($4,000,000.00) plus, in each instance, such additional sum (not to exceed fifteen percent (15%) of each Budget) as may be necessary to complete the work to which each Budget relates.

Section 5.09. Maintenance of Other Public Improvements. The City and the Authority, as appropriate, shall cause all Public Improvements (other than the malls and circulation system) to be operated and maintained (including structural repairs) at all times in a clean and neat manner and in good condition and repair to the highest standards consistent with the initial design and construction standards set forth in this Agreement. The Developer shall pay all such costs relative to the operation and maintenance (including structural repairs) to similar standards of the malls and circulation system.

ARTICLE VI

PARCELS D-1, D-2, D-3 AND D-4; PARCEL E

Section 6.01. Demolition of Hayward Place Garage. The City may, either before or after the temporary renovations described in Section 5.04 b) hereof, determine to discontinue the Hayward Place Garage. In the event that such determination is made, the City shall, to the extent adequate funds are available within the Parking Garage Budget (after allowance for design and construction costs for the Parking Garage) forthwith demolish the Hayward Place Garage and proceed with the construction of a subsurface parking facility on Parcels D-1, D-2, D-3 and D-4 (fully integrated in use with the Parking Garage) that will provide parking spaces which, when supplemented by the number of spaces in the Parking Garage, will aggregate not less than 1500 spaces, efficiently designed. If approved by the Developer because of limitations imposed by the Parking Garage Budget, the City may provide an aggregate of less than 1500 spaces except that in no event shall the City be

obligated to spend hereunder a sum which, when added to the cost for design and construction of the Parking Garage, exceeds the Parking Garage Budget.

Section 6.02. Right to Acquire Parcels D-1, D-2, D-3 and D-4. In the event that the City shall determine to discontinue the Hayward Place Garage, the Developer and its successors and affiliates are hereby given the sole and exclusive right and option on the terms herein set forth to acquire the unencumbered fee simple absolute interest of the City in Parcels D-1, D-2, D-3 and D-4 or, if a subsurface parking facility shall be constructed thereunder, in the air rights over Parcels D-1, D-2, D-3, D-4 and New Essex Street and such subsurface parking facility and such rights appurtenant thereto as are necessary to make the air rights commercially viable. No sale, transfer or other disposition of any such rights shall be made by the City until such date (which shall not be less than two (2) years from the date on which the City Council shall approve this Agreement) as the City has finally determined in accordance with law that the Hayward Place Garage is to be discontinued in operation and demolished and has given notice to the Developer of such determination and of the extent, if any, to which the City has determined and agrees to create subsurface parking beyond that to which it is obligated hereunder. If the Developer shall notify the City within two (2) years and sixty (60) days (the "Option Period") after receipt of such notice of determination that it desires to purchase the rights hereby made available to it then the City shall sell the same (without air rights over New Essex Street, if the Developer shall so elect) to the Developer, its successors or its affiliates.

The City has obtained appraisals which it has determined are acceptable to it and which set forth the current fair market values of Parcels D-1,D-2, D-3, D-4 and relevant

interests in New Essex Street. The purchase price to be paid hereunder shall, if subsurface rights are not retained by the City, be the fair market values shown by such appraisals plus one-half (1/2) of the increase, if any, in such values as the result of construction of the Public Improvements and the Project. The purchase price to be paid hereunder shall, if subsurface rights are retained by the City, be one-half (1/2) of the fair market values shown by such appraisals plus one-half (1/2) of the increase, if any, in such values as the result of construction of the Public Improvements and the Project. The existence and amount of increase in fair market values attributable to the construction of the Public Improvements and the Project shall be determined by independent appraisal.

As aforesaid, the Developer may exercise the right and option set forth in this Section 6.02 by giving notice of its desire to purchase such rights to the City at any time within the Option Period. After the receipt of and following such notice from the Developer, the parties shall in good faith negotiate and enter into an agreement calling for the purchase and sale of the rights in question. Such agreement shall be in the customary form of agreements for the purchase and sale of real estate in the greater Boston area except that the agreement shall reflect such reservation and shall contain other appropriate provisions with respect to the integration of construction and other matters relevant to coordinated use of the rights conveyed and the rights retained by the City. Any such purchase and sale agreement may provide for a closing date extending up to six (6) months after the end of the Option Period and the expiration of the Option Period in any event shall not affect the rights of the Developer to proceed with an acquisition if notice of the exercise of such rights has been given prior to the expiration thereof, provided that, the

Developer shall lose its rights hereunder to proceed with an acquisition if, because of a failure of the Developer to work in good faith to conclude a purchase and sale agreement or to perform thereunder, a closing has not occurred within six (6) months after the end of the Option Period, unless the City and the Developer shall agree to a further extension. Notwithstanding the foregoing, in all cases the Developer's rights hereunder shall extend for such period of time as may be necessary for the City to substantially complete construction of any subsurface parking facilities for which the City is or may become obligated hereunder.

Prior to the construction of any additional subsurface parking facilities on Parcels D-1, D-2, D-3 or D-4 and prior to disposition of such rights to the Developer, its successors or affiliates, the City may use the surface of the land for parking so long as the same is operated and maintained to the highest standards and in keeping with the character of the Project.

Section 6.03 Right to Acquire Parcel E. The City agrees to demolish the garage known as the Lincoln-Essex Parking Garage and designated on Exhibit A. Such demolition shall commence no later than the date on which the Parking Garage shall be available for occupancy and demolition shall be expeditiously completed once started. Pursuant to understandings that the City has verbally reached (and hereby agrees to exercise best efforts to confirm in writing) with Boston Edison Company, it is expected that the City shall acquire from Boston Edison Company Parcel E and the air rights over the adjacent, existing substation in exchange for the unencumbered fee simple absolute interest in the parcel of real estate from which the Lincoln-Essex Parking Garage will have been cleared. Such exchange shall occur as soon as possible after the completion of demolition of the Lincoln-Essex Parking Garage.

The Developer and its successors and affiliates are hereby given the sole and exclusive right and option to acquire the unencumbered fee simple absolute of the City in Parcel E and such air rights over said substation (less areas retained by the City for street purposes) for a period which begins on the date hereof and ends on the last to occur of five (5) years from the date on which the City shall satisfy its obligations to acquire title to Parcel E and such air rights over said substation or twelve (12) months from the date of issuance of all certificates of completion permitted under Section 4.06 hereof. However, if the City shall determine and agree to construct subsurface parking under Parcel E the acquisition right and option shall be limited to a right and option to purchase the air rights above Parcel E and such subsurface parking and over said substation and such rights appurtenant thereto as are necessary or appropriate to make the air rights commercially viable.

The City shall within thirty (30) days after the date on which the City Council shall approve this Agreement cause an appraisal to be made of the fair market value of Parcel E (less any areas proposed to be retained for future street purposes) and such air rights over said substation as of such date. The purchase price to be paid hereunder shall, if subsurface rights are not retained by the City, be the fair market value shown by such appraisal plus one-half (1/2) of the increase, if any, in such value as the result of construction of the Public Improvements and the Project. The purchase price to be paid hereunder shall, if subsurface rights are retained by the City, be one-half (1/2) of the fair market value shown by such appraisal plus one-half (1/2) of the increase, if any, in such value as the result of construction of the Public Improvements and the Project. The existence and amount of increase in fair market value attributable to the construction of the Public Improvements

and the Project shall be determined by independent apprais-al.

The Developer's (or its successors' or affiliates') exercise of the right and option set forth in this Section 6.03 shall be undertaken with the benefit of all time periods and in the same manner as it is entitled to exercise the right and option provided under Section 6.02, above. If under either of such Sections the City has determined and agreed to construct subsurface parking facilities then the City shall forthwith thereafter perform such construction in order that the acquisition rights of the Developer (or its successors or affiliates) hereunder may be availed of on a timely basis.

ARTICLE VII

CONSTRUCTION STANDARDS; INSURANCE

Section 7.01. Construction Standards. The construction (which word, as used in this Article, includes, without limitation, initial construction and, except where otherwise specified, alterations, restoration, repair, rebuilding, modernization and new construction) which shall or may be performed by the City, the Authority or the Developer, as provided in this Agreement, shall be subject to and in accordance with the following standards:

(a) Each party shall perform its respective construction so as not to:

i. cause any unnecessary increase in the cost of construction of the other party,

ii. unreasonably interfere with or inconvenience the construction of the other party, or

iii. unreasonably interfere with or impair the access to, use, occupancy or enjoyment of the other party's property by the other party or its employees, customers, visitors and licensees ("Permittees");

(b) If during construction either party's property and the construction thereon could reasonably be deemed to constitute a hazardous condition for the other party or its Permittees or detract from the attractiveness, which would otherwise exist, of the improvements of the other party or in the event that either party's later alterations, restorations, repair, rebuilding or modernization or new construction could reasonably be deemed to constitute such a hazardous condition or to so detract from the attractiveness when the Project shall have opened for business, such party will erect and maintain during the term of such construction, an adequate and attractive appearing construction barricade, or other protective device, of adequate height, and otherwise so as to provide adequate protection to, and screening from, the public, and shall maintain the same until removal would be justified under good construction practice;

(c) Each party will at all times:

i. take any and all safety measures reasonably required to protect the other party and all Permittees from injury or damage caused by or resulting from the performance of its construction,

ii. indemnify, hold harmless and defend the other party hereto from and against all claims, demands, suits, costs, expenses, and liabilities arising from or in respect to the death, accidental injury, loss or damage caused to any natural person or to the property of any person or entity as shall occur by virtue of its construction. In this connection, the City agrees that its indemnity shall, without limitation, be against any claims by the operation of the Parking Garage on account of any interference with the full use of the Parking Garage during the construction of the Project, and

iii. indemnify and hold the other party harmless from and against mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities arising from its construction.

Section 7.02. Insurance During Construction. Each party will maintain or cause its contractors to maintain, at its own expense or the expense of such contractor, owner's liability insurance, contractor's liability insurance, workmen's compensation insurance, builder's risk insurance

and all other forms of insurance, and in such amounts, as shall customarily be maintained by owners, contractors, builders or developers during similar construction. All policies of insurance maintained by any party under this Section 7.02 shall name the other party as a co-insured. In addition to such insurance, each party will cause its professionals engaged in the design and construction of the improvements contemplated by this Agreement to maintain professional liability insurance in the broadest available coverage and in amounts customary for developments of similar scale. Such professional liability insurance shall inure to the benefit of all parties hereto and shall, to the extent commercially available at reasonable rates, be on a "claims made" and not an "occurrence" basis.

ARTICLE VIII

ZONING AND LAND USE

Section 8.01. Zoning and Land Use of Project Area. Those portions of the Project Area which are within the Bedford West Urban Renewal Project Area shall be governed by the Plan, a copy of which is annexed hereto and marked Exhibit I. The Project Area in its entirety shall be governed by the Code as now in force or hereafter amended. If it is necessary to secure amendments, variances or privileges to or under the Plan or the Code in order to permit construction and use of the Project to proceed in accordance with the Development Program and plans approved pursuant to Article IV hereof, the Authority and the City shall exercise their best efforts to secure any such amendments, variances or privileges and shall cooperate with Developer in any efforts related thereto. Without limitation, if the Developer seeks the benefit of the provisions of Chapter 121A, the City and the Authority agree to make all reasonable efforts to grant the approvals sought thereunder, including

deviations from the Code.

Section 8.02. Zoning of Adjacent Parcels. In recognition of the fact that design of the Project will reflect light, air, open space and other benefits accruing from the present character of development on adjacent parcels, the City and the Authority shall:

(a) cooperate with the Developer in exploring possible changes to the Code relative to such parcels with the objective of providing zoning applicable thereto which will encourage development thereof compatible with the design objectives of the Project, and

(b) not propose any changes to the Code affecting the zoning applicable to such parcels without prior notice to Developer.

ARTICLE IX

ASSIGNMENT

Section 9.01. Selection of Developer. This Agreement is being entered into as a means of permitting and encouraging the development of the Project Area in accordance with the terms hereof and not for speculation in landholding. Developer acknowledges that, in view of:

(a) the importance of the undertakings set forth herein to the general welfare of the community;

(b) the substantial financing and other public aids that have been and/or will be made available by law, the federal government and the City for the purpose of making such undertakings possible;

(c) the importance of the identity of the parties in control of the Developer and the Project; and

(d) the fact that a transfer of all or part of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership is for practical purposes a transfer or disposition of the interest in the Project then owned by Developer;

the qualifications and identity of Developer are of particular concern to the community, the Authority and the

City. Developer further recognizes that it is because of such qualifications and identity that the City and the Authority are entering into this Agreement, and, in so doing, are further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed by it.

Section 9.02. Prohibited Transfers. For the reasons set forth in Section 9.01. hereof and except as otherwise provided herein and in Section 9.03. hereof, it is hereby agreed that commencing on the date hereof and continuing until the date of issuance or entitlement to issuance by the Authority of a certificate of completion (see Section 4.06) with respect to the Project:

(a) No transfer (by assignment or otherwise) of all or any part of Developer's rights under this Agreement or of the Developer's interest in the Project shall be made to any person (including but not limited to, any partnership, joint venture or corporation) unless the consent thereto of the Authority has first been obtained or established herein.

(b) No transfer or change of legal or beneficial interests in Developer (or any successor entity to the Developer permitted hereunder) by sale, pledge or otherwise shall be made unless the consent thereto of the Authority has been first obtained or established herein.

Section 9.03. Permitted Transfers. The restrictions set forth in Section 9.02. hereof shall not apply to any transfer:

(a) of any interest in the Project after completion of any portion thereof for which the Developer has received or is entitled to receive a certificate of completion;

(b) of any leasehold interest in the Project or any part thereof following the completion for occupancy of the improvements subject to such leasehold interest; provided, however, that prior to completion of the Project no transfer of a leasehold interest comprising more than one-third (1/3) of the gross leaseable area of the Project and providing for a term of more than thirty (30) years shall be made without the prior consent of the Authority;

(c) of any interest in the Project or any part thereof as security to any Mortgagee to the extent that the funds advanced by the Mortgagee relate, without limitation, to fees, costs, expenses, charges and other sums incurred (past or future) in connection with planning, developing, and constructing the Project and/or prior proposals for development in the Project Area or the protection of such security;

Prior to the time at which the Developer shall grant one or more mortgages, the loan proceeds from which shall be used in connection with actual construction of any part of the Project, the maximum loan for which a mortgage may be granted as a permitted transfer under this Section 9.03.(c) shall not exceed Five Million Four Hundred Thousand Dollars ($5,400,000.00).

(d) of any rights of Developer under this Agreement with respect to any transfer permitted hereby;

(e) of rights to Alstores Realty Corporation relating to subsurface easements, air ducts, and emergency egress requirements, cross licenses, easements and other rights;

(f) of any interest in the Project or any part thereof for utility or like easements necessary to permit the construction and use of the Project or any part thereof;

(g) of any interest in the Project or any part thereof or of any rights hereunder at any time if allowed or consented to pursuant to the provisions of Chapter 121A;

(h) of any interest in the Project or any part thereof or of any of Developer's rights hereunder to a partnership or joint venture of which the undersigned general partners of the Developer are controlling general partners under Massachusetts law;

(i) of any interest in the Project or any part thereof to a nominee trust or corporation, but no transfer without such consent shall be made of the beneficial interest in such nominee, except as such transfer may be permitted under this Section 9.03.

(j) of any interest in the Project or any part thereof or of any rights hereunder or of any legal or beneficial interest in the general or limited partners in the partnership entities comprising the Developer among themselves or among any entity related thereto under the attribution rules presently set forth in Section 318 of the Internal Revenue Code; or the admission of any additional limited partners to any of such entities;

(k) of interests in the Developer which do not exceed in the aggregate more than fifteen percent (15%) of all such interests;

(l) made by the purchaser at foreclosure by a Mortgagee or by the grantee under a deed given in lieu of foreclosure by a Mortgage, provided that such purchaser or grantee is an Institutional Lender or an agent, designee or nominee of an Institutional Lender which is wholly owned or controlled by an Institutional Lender; or

(m) occurring by any sale at foreclosure by a Mortgagee or, in the event of a deed given in lieu of foreclosure, to any party and to any one claiming by, through or under such party, as to which a permitted transfer may be made hereunder or to any other party who shall be approved by the Authority in accordance with the provisions of this Agreement.

Section 9.04. Authority's Consent. Where the consent of the Authority to any transfer is required hereby, Developer shall notify the Authority of all parties to whom such transfer is proposed to be made, and such notice shall provide sufficient information to enable the Authority to evaluate the acceptability of the proposed transferee. The Authority, at any time within thirty (30) days after the giving of such notice of the identity of any such party, shall have the right to notify Developer that it objects to the proposed transfer to such party, and the Authority shall, in such notice, specify reasonable grounds for such objection (no such objection shall be made if no such reasonable grounds exist). If such objection shall be made by the Authority, such party shall not be a transferee without the subsequent consent of the Authority. If objection is not made by the Authority within such thirty (30) day period or such additional period of time as may be requested by the Authority and approved by the Developer, the proposed transfer shall be deemed to be approved by the Authority.

Section 9.05. Excepted Transfers. Nothing herein shall give the Authority any right or power to control the transfer of any stock, shares or other interests in any corporation the stock of which is traded on a major stock

exchange, mutual insurance company or any other entity the ownership interests of which are held generally by the public at large.

ARTICLE X

EXHIBITS

Section 10.01. Exhibits. The parties hereto acknowledge and agree that all of the Exhibits hereto are presently in form and substance acceptable to them.

ARTICLE XI

DEFAULT

Section 11.01. Event of Default. Subject to the provisions of this Section 11.01, an event of default shall occur if either party fails to observe or perform any substantial obligation hereunder (including any obligation to proceed in good faith or to exercise best efforts), and shall fail to cure, correct or remedy such default within a reasonable time (in view of the nature of the default, the then circumstances and the effect on the nondefaulting party of the length of the continuation of such default) after written notice from the nondefaulting party specifying such default.

Without limitation, the existence of an event of default, the reasonableness of notice given with respect thereto and the remedies sought on account thereof shall be subject to review by a court of competent jurisdiction. If an event of default shall occur, the non-defaulting party may exercise such rights as are given to it hereunder and against one or more of the defaulting parties all in such order of preference and against such defaulting parties as the non-defaulting party may elect. The election of one remedy hereunder shall not preclude later resort to another remedy, unless the remedy first elected was termination. The parties hereto acknowledge that the specific dollar amounts set forth in Section 11.05 hereof with respect to

the Authority and the City have been determined and agreed upon because the parties hereto are unable to ascertain the exact amount of damages which the Developer would sustain by reason of default of the City or the Authority in the circumstances indicated. The City and the Authority agree that such dollar amounts represent their best reasonable estimate at this time of damages which the Developer would sustain in such circumstances. Except as expressly set forth herein, none of the parties hereto or any general partner of or any assignee, transferee or other successor to any party hereunder, or to the rights of any party hereunder, shall be personally responsible for performance of any of the obligations herein set forth.

Section 11.02. Default by the Developer. Prior to the time at which the Developer is obligated to start construction of the Project, the only events which may be claimed as events of default on the part of the Developer are a failure to continue with design of the Project or abandonment of the Project. If the City or the Authority claims that either of such events of default exist on the part of the Developer and if an event of default on the part of the City or the Authority is not then existing, then, except as otherwise expressly provided and subject to the rights of Mortgagees provided in Section 11.03, the Authority or the City may terminate this Agreement upon notice to Developer, whereupon this Agreement shall terminate forthwith.

After the time at which the Developer is obligated to start construction of the Project, the only event which may be claimed as an event of default on the part of the Developer is a failure diligently to pursue such construction to completion. If the City or the Authority claims that such event of default exists and if an event of default on the part of the City or the Authority is not existing then the sole remedy available to the City or the Authority shall

be the right to collect from the Developer a sum payable at the rate of One Hundred Fifty Thousand Dollars ($150,000.00) per year commencing on the date on which the Developer's event of default shall occur and ending on the first to occur of the date on which such event of default shall be cured or substantial completion of the Project shall be achieved. If the Developer shall fail to pay such amount then, as liquidated damages on account thereof, the Developer shall pay to the City or the Authority (but only one) the amount unpaid and owing under the preceding sentence plus twenty percent (20%) thereof on account of collection fees.

Section 11.03. Rights of Mortgagees. Any notices permitted or required to be given hereunder by City or Authority shall not be effective unless a copy of the same is promptly given to any Mortgagee which shall have provided notice to the City or the Authority that it holds a mortgage on any part or all of the Project.

If an event of default shall occur by the Developer hereunder, the Authority and the City shall have no actionable rights on account of the same unless and until the City and the Authority shall send notice to the Mortgagee stating that an event of default by the Developer exists and also stating the nature of the default and the action proposed to be taken on account thereof if the same shall not be cured. Following receipt of such notice, the Mortgagee shall have the election and right to cure such default provided that the Mortgagee sends notice of such election to the City and the Authority within thirty (30) days after it shall have received notice from the City and the Authority. In the event such election is made, the Mortgagee shall have a reasonable period of time within which to commence and thereafter diligently pursue to completion the curing of the claimed event of default. Further, in the event of any

such election, the Mortgagee shall be entitled to all of the privileges of Developer hereunder, and the Authority and the City shall accept performance by such Mortgagee with any obligation of the Developer's hereunder with the same effect as though performed by the Developer.

No Mortgagee shall be obligated to perform any obligation under this Agreement or to construct or complete any part of the Project unless such Mortgagee shall have elected specifically so to do in writing and the extent of the liability of such Mortgagee under this Agreement in such case shall be as set forth in the notice of its election to cure given to the City and the Authority. No sale or other disposition of the Project Rights, including a sale or disposition under the provisions of Section 11.04 hereof, shall modify or otherwise affect any rights of any Mortgagee and every such sale or other disposition shall always be made subject to such rights.

Section 11.04. Authority's Right to Purchase. Prior to the time at which the Developer starts construction of the Project, if an event of default is existing on the part of the Developer and if a Mortgagee shall not exercise its rights under Section 11.03, above, the Authority may notify (which date of notice shall be the Notice Date for purposes of Article XIII) the Developer of its intent to purchase from the Developer, on its behalf or on behalf of the City (or to designate a developer who will purchase on behalf of either), the Project Rights at Fair Market Value (unaffected by the value of the Public Improvements undertaken by the City or the Authority pursuant to this Agreement), and such purchase shall be completed within thirty (30) days following completion of any appraisal in accordance with Article XIII.

Section 11.05. Default by the City or the Authority. The obligations of the City and the Authority hereunder

shall be jointly and severally binding upon them except that in no event shall the Authority have any responsibility or liability relative to the Parking Garage, including land assembly therefor and its construction and operation. If the City or the Authority commits an event of default and an event of default on the part of the Developer is not then existing, the Developer may:

(a) If such event of default shall occur prior to the Closing Date, then the Developer may either:

i. send notice to the City and the Authority of the termination of this Agreement, in which case the City or the Authority shall pay to the Developer as liquidated damages the sum of $3,150,000, the Developer shall convey the Project Rights to the City free of all encumbrances and thereafter this Agreement shall terminate and neither party shall have further recourse to the other, or

ii. send notice to the City and the Authority of the decision of the Developer not to terminate this Agreement and to seek specific performance of the obligations of the City and the Authority hereunder in which event this Agreement shall continue in force and the Developer may proceed to seek specific performance. If the Developer shall exercise its right to seek specific performance then, commencing on the first day of the month next following notice from the Developer to the City and the Authority of such exercise, the City or the Authority shall pay the Developer, as liquidated damages, the sum of One Hundred Thousand Dollars ($100,000.00) per month up to a maximum of One Million Five Hundred Thousand Dollars ($1,500,000.00).

(b) If such event of default shall occur after the Closing Date but prior to Substantial Completion of the Parking Garage, the Developer may either:

i. send notice to the City and the Authority of the termination of this Agreement, in which case the City or the Authority shall pay to the Developer as liquidated damages the sum of $6,150,000, together with interest at the rate of eight and one-half percent (8-1/2%) per annum from the date of the event of default, the Developer shall

convey the Project Rights to the City free of all encumbrances and thereafter this Agreement shall terminate and neither party shall have further recourse to the other, or

ii. send notice to the City and the Authority of the decision of the Developer not to terminate this Agreement and to seek specific performance of the obligations of the City and the Authority hereunder in which event this Agreement shall continue in force and the Developer may proceed to seek specific performance. If the Developer shall exercise its right to seek specific performance then, commencing on the first day of the month next following notice from the Developer to the City and the Authority of such exercise, the City or the Authority shall pay the Developer, as liquidated damages, the sum of One Hundred Thousand Dollars ($100,000.00) per month up to a maximum of Two Million Five Hundred Thousand Dollars ($2,500,000.00).

(c) If such event of default shall occur after Substantial Completion of the Parking Garage, then the Developer shall have no right to terminate this Agreement but the City and the Authority shall be liable for all damages, direct and consequential, which the Developer may suffer or incur on account of the default of the City or the Authority. In addition, the Developer may bring an action for specific performance.

ARTICLE XII

CONDITIONS TO DEVELOPER'S OBLIGATIONS

Section 12.01. Conditions to Developer's Obligations. In the event that, on or before November 29,1978,any of the following conditions shall not have been fulfilled:

(a) all federal, state and local legislation, permits, authorizations and approvals (expressly excepting building permits but including all environmental approvals) shall have been finally (without further right of administrative or judicial review) and unconditionally obtained to permit the Public Improvements to be undertaken as hereby required; and

(b) the Developer shall have received final and non-appealed authorization acceptable in all respects (including an agreement relating to payment of the excise required by Chapter 121A) to the Developer to proceed with the Project pursuant to the provisions of Chapter 121A,

then, the Developer may terminate this Agreement in accordance with Section 12.02 hereof or declare an event of default to exist, but as to the latter, only if the City and the Authority have failed to exercise all best and diligent efforts to cause the foregoing conditions to be satisfied.

Section 12.02. Termination for Failure of Conditions. In the event that any of the conditions set forth in Section 12.01 hereof has not been fulfilled on or before the date set therefor or such additional time as may be reasonably requested by the City and the Authority and approved by Developer, the Developer may, at its election, terminate this Agreement, postpone (but without waiving its right subsequently to terminate this Agreement) the time for fulfillment of such condition for such period of time as the Developer may deem reasonable or waive the fulfillment of such condition. Upon any such termination for failure of any of such conditions the City shall, if such failure shall not be an event of default on their part, return or cause Alstores Realty Corporation to return to the Developer Six Hundred and Fifty Thousand Dollars ($650,000.00). If such failure shall be an event of default by the City or the Authority then the Developer shall have the rights herein specified on account thereof.

ARTICLE XIII

FAIR MARKET VALUE

Section 13.01 Fair Market Value. The term "Fair Market Value" as used in this Agreement means the price, as

of the Notice Date, which a seller, willing but not obligated to sell, would accept for the Project Rights, and which a buyer, willing but not obligated to buy, would pay therefor in an arms' length transaction. Fair Market Value shall be determined in accordance with the following procedure.

Either party may give written notice of such disagreement to the other party and in such notice shall designate the first appraiser (the "First Appraiser"). Within fifteen (15) days after the service of such notice, the other party shall give written notice to the party giving the first notice, which notice shall designate the second appraiser (the "Second Appraiser"). If the Second Appraiser is not so designated within or by the time above specified, then the party designating the First Appraiser may request appointment of the Second Appraiser by the Chief Judge of the United States District Court for the District of Massachusetts or any successor federal court of original jurisdiction. The First and Second Appraisers so designated or appointed shall appoint a third appraiser (the "Third Appraiser") and if they shall be unable to agree upon such appointment within ten (10) days after the time aforesaid, the Third Appraiser shall be selected by the parties themselves, if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request that such appointment be made by the Chief Judge of the United States District Court for the District of Massachusetts or any successor federal court of original jurisdiction. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act. Each party shall pay the fees and expenses of the appraiser appointed by such party, or in

whose stead, as above provided, such appraiser was appointed, and the fees and expenses of the Third Appraiser, and all other expenses, if any, shall be borne equally by both parties. Any appraiser designated to serve as above provided, shall be disinterested, and shall be familiar with property values in metropolitan Boston, Massachusetts. The appraisers shall determine the Fair Market Value of the Project Rights. A decision joined in by two of the three appraisers shall be the decision of all the appraisers. After reaching a decision, the appraisers shall give written notice thereof to the parties hereto which notice shall in reasonable detail state the Fair Market Value so determined and the factors considered by the appraisers in making such determination, and the Fair Market Value so stated shall be considered Fair Market Value for the purposes of this Agreement and shall be final and binding upon such parties. If the appraisers shall fail to reach a decision within ninety (90) days (or such further time as may reasonably be requested by either party and approved by the other) after the appointment of the third appraiser, either party may make application to any court of competent jurisdiction for a determination by such court of Fair Market Value.

ARTICLE XIV

SALE AND CONSTRUCTION AGREEMENT

Section 14.01. Coordination with Developer. With reference to certain rights of the City under the Sale and Construction Agreement, the City hereby agrees as follows:

(a) Under Section 1.3 of the Sale and Construction Agreement the City agrees forthwith to cause title to the Properties (as defined in the Sale and Construction Agreement) to be examined and to notify the Developer promptly of the results of such examination. The Developer shall make such information relevant to title as it possesses available to City. The City shall, in addition to any material title defects it may claim as against Alstores Realty Corporation, claim such title defects as the Developer may

assert, all within the time set therefor under said Section 1.3. If the Developer shall elect to do so it may send a notice of title defects to Alstores Realty Corporation under said Section 1.3 in the name of and on behalf of the City. The foregoing shall not relieve the City of its obligations hereunder to deliver to the Developer title of the quality set forth in this Agreement.

Further, under said Section 1.3, the City agrees to send notice extending the Closing Date (as defined in the Sale and Construction Agreement) only upon notice from the Developer requesting the City to do so. If the City shall fail to send such notice within ten (10) days after such request then the Developer may send the same in the name of and on behalf of the City. If, under said Section 1.3, the Developer or the City must pay $250,000 to Alstores Realty Corporation in order to extend said Closing Date beyond January 31, 1979 then the City shall upon notice from the Developer pay $250,000 directly to Alstores Realty Corporation for such extension or reimburse the Developer for such amount if the Developer shall have paid the same to Alstores Realty Corporation, provided, however, that the City shall be so obligated to make such reimbursement only if, on January 31, 1979, Governmental Approvals (as defined in Section 1.6(d) of the Sale and Construction Agreement) shall not have been obtained. The failure of the City so to reimburse the Developer shall, whether or not a closing occurs hereunder, entitle the Developer to recover such amount in a separate action in addition to other rights provided to the Developer following a default by the City under this Agreement. Any extension of said Closing Date shall not be treated as a waiver by the Developer of any of the obligations of the City or the Authority hereunder, including the obligation to perform in accordance with the Master Schedule.

(b) Wherever under the Sale and Construction Agreement the City shall have the right to terminate the same it shall not exercise such right without the prior consent of the Developer. In no event shall the City exercise such right without first taking such actions as the Developer may request to avoid termination and, instead, to obtain performance by Alstores Realty Corporation of its obligations under the Sale and Construction Agreement. Without limitation, upon request of the Developer the City shall exercise the power of eminent domain as provided in said Section 1.3.

(c) Under Section 1.6(c) of the Sale and Construction Agreement the City shall not approve the instruments required thereby without first delivering to the Developer proposed copies of drafts thereof and receiving the approval of the Developer thereto.

(d) No closing shall occur under the Sale and Construction Agreement without the consent of the Developer. At the request of the Developer the City shall waive such of the conditions set forth in Section 1.6 of the Sale and Construction Agreement as do not materially affect the quality of title to be conveyed to the City thereunder.

ARTICLE XV

MISCELLANEOUS

Section 15.01. Governing Law. This Agreement is being executed and delivered in the Commonwealth of Massachusetts and shall be governed by and construed and interpreted in accordance with the laws thereof.

Section 15.02. Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only, and they shall in no way be held or deemed to define, modify or add to the meaning, scope or intent of any provisions of this Agreement.

Section 15.03. Consents and Approvals. Except as herein otherwise provided, whenever in this Agreement the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, delayed or qualified and shall be in writing, signed by an officer or agent, thereunto duly authorized, of the party granting such consent or giving such approval.

It is expressly agreed that no notice permitted or required under Article XI or Article XIII hereof shall be effective as against the Developer unless it is signed by the Mayor of the City, the Chairman of the Real Property Board and the Director of the Authority. The foregoing sentence shall apply notwithstanding that any provision in either of such Articles shall refer to notice from the City or the Authority, but not both.

The City and the Authority agree, for the purpose of providing the Developer with certainty in acting hereunder with the City and the Authority, that where notices, consents, approvals, authorizations, reviews and the like are

required hereunder they need be obtained from the City only with respect to matters relating to the construction and operation of the Parking Garage. In all other matters where notices, consents, approvals, authorizations, reviews and the like are required hereunder they may be given by the Authority. Any written notice, consent, approval, authorization or the like received by the Developer and purporting to be from either the City or the Authority may be relied upon as authorized to be given hereunder, subject to the provisions of Section 4.03(b) hereof.

Section 15.04. No Waiver. No assent, express or implied, by either party to any breach of or default in any term, covenant or condition herein contained on the part of the other to be performed or observed shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof.

Section 15.05. Alternatives to Sale of Air Rights. If under applicable law it is not possible for the various air rights dispositions hereunder to be made without public auction then the City and the Authority shall take such actions as the Developer may request to change such law. In the alternative, such disposition shall be made by the grant by the City of leases of such air rights, which leases shall be drafted by the parties so as to carry out the intent of this Agreement.

Section 15.06. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if delivered by hand or sent by registered or certified United States mail, postage prepaid, return receipt requested, and

(1) if directed to the City, addressed to it:

Chairman, Real Property Board
with copies to

Corporation Counsel
Law Department
City Hall
Boston, Massachusetts 02101

and

Director
Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02101

and

(2) if directed to the Authority addressed to it:

c/o Director
Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02101

with copies to:
City of Boston
c/o Corporation Counsel
City Hall
Boston, Massachusetts 02101

and

Chairman
Real Property Board
City Hall
Boston, Massachusetts 02101

(3) if directed to Developer addressed to:

Mondev Mass., Inc.
One Westmount Square
Suite 600
Montreal, Quebec H3Z 2R5

Attention: President

and

Sefrius Corp.
600 Madison Avenue
New York, New York 10022

Attention: President

with a copy to:

Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108
Attention: James B. White, Esquire

or such other address as may from time to time be specified in writing by any party hereto. Unless otherwise specified

in writing, each party shall direct all sums payable to another party's address for notice purposes.

Section 15.07. Force Majeur. In the event that either party shall be unable timely to perform its obligations hereunder due to fire, earthquake, flood, explosion, casualty, labor problems, unavailability of materials, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, or any other cause beyond its control, the time for such performance shall be extended for a period equal to the length of the delay caused thereby; provided, however, that any party hereto intending to avail itself of the provisions of this Section 15.07. shall give notice of such intent to the other parties hereto not more than fifteen (15) days from the date of occurrence of any such cause.

Section 15.08. Invalidity of Provisions. In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Agreement shall be construed as if it did not contain such phrases, sentences, clauses or paragraphs.

Section 15.09. Rights of Others. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto,and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 15.10. Survival of Obligations. All of the obligations, representations, warranties and covenants made in this Agreement shall be deemed to have been relied upon by the party to which it was made and to be material and shall survive the execution and performance of any agreements related hereto to the extent that they are by their terms, or by a reasonable interpretation of the context, to be performed or observed after the performance of any such

agreements.

Section 15.11. Time of Essence. Time is of the essence of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually attempt to fulfill the conditions applicable to each of them.

Section 15.12. Duration of Plan. Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate on the date of the termination of the Plan, except that such termination shall not affect any rights vested under or pursuant to this Agreement at such time.

Section 15.13. Real Estate Taxes. Nothing in this Agreement shall affect any right, remedy or recourse available to the City in law or in equity for the failure by the Developer (or other party responsible therefor) to pay any excise under Chapter 121A or any real estate tax, assessment, water charge, sewer rent or charges and every other governmental charge of every character, general and special, ordinary and extraordinary, which may properly be assessed, levied, confirmed, imposed or become a lien on the Project Area.

Section 15.14. Supplemental Documents. Recognizing that the implementation of the provisions hereof with respect to various actions of the parties hereto may require the execution of supplemental documents (including, without limitation, the preparation of a detailed survey with respect to the Project Area) the precise nature of which cannot now be anticipated, each of the parties agrees to assent to, execute and deliver such other and further documents as may be reasonably required by other parties hereto (or by any Mortgagee) so long as such other and further documents are consistent with the terms and provisions

hereof, shall not impose additional obligations on any party, shall not deprive any party of the privileges herein granted to it and shall be in furtherance of the intent and purposes of this Agreement.

Section 15.15. Superseding Effect. This Agreement together with the Sale and Construction Agreement amends, replaces and supersedes in its entirety that certain agreement dated April 17, 1975 among the City, the Authority and Sefrius Corp., and that certain letter-agreement dated October 31, 1977 among the City, Alstores, Sefrius Corp. and Mondev. U.S.A., Inc., all the parties thereto and hereto hereby agreeing that no party to said prior agreement and letter-agreement shall have any further obligations thereunder, except as the same have been amended, replaced and superseded by this Agreement.

Section 15.16. Speedy Trial. The parties hereto agree that if an event of default is claimed by any party all parties shall assent to a speedy trial and shall otherwise cooperate so that the dispute may be promptly resolved.

Section 15.17. Operating Covenant. Annexed to the Sale and Construction Agreement as Exhibit F is an operating covenant which is to be entered into between Alstores Realty Corporation and the City. The City hereby agrees that at the closing hereunder it will assign and transfer all of its rights and privileges under such covenant to the Developer and that the Developer shall have the right to enforce such covenant in the name of and on behalf of the City and the City hereby consents to the exercise of such right. If the Developer is prohibited by law from undertaking such enforcement or shall elect not to do so then the City agrees directly to enforce such covenant in such manner and at such times as the Developer may specify by notice to the City.

All enforcement proceedings brought directly by the City shall be undertaken by Corporation Counsel of the City with such co-counsel as the Developer may select, except that the fees and expenses for any independent counsel selected by the Developer shall be borne by the Developer.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

ATTEST:

CITY OF BOSTON

_____

By _____
Kevin H. White
Mayor

ATTEST:

CITY OF BOSTON
By: Real Property Board

_____

By _____
Joanne A. Prevost
Commissioner of Real
Property Board
Chairman of Real
Property Board

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

_____

By _____
Director

WITNESS:

LAFAYETTE PLACE ASSOCIATES
By: Mondev Mass., Inc.
general partner

_____

By _____
Its

WITNESS:

By: Sefrius Corp.
general partner

_____

By _____
Its

MEMORANDUM NOVEMBER 16, 1978

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: LAFAYETTE PLACE

On August 3, 1978, the Authority authorized the execution of a Tripartite Agreement concerning the Lafayette Place Project. This approval required a submission to the Authority of said agreement in final form for ratification. Since that time, the City Council has unanimously approved the execution of said agreement together with approval of related matters, a copy of which approval is attached hereto.

The agreement is now in final form and is the same in all respects with the exception of a revised time schedule reflecting the delay between the time of submission and the time of approval by the Council. It is now necessary and appropriate for the Authority to reaffirm its approval of the Project and authorize the execution of the Tripartite Agreement, the Sale and Construction Agreement and the related Land Disposition Agreement. The agreements have been signed by the Mayor and are attached to the proposed resolution.

An appropriate Resolution is attached.

Attachment